Libertarianism

Critical Review

An Interdisciplinary Journal *of* Politics *and* Society

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Justin Weinberg

FREEDOM, SELF-OWNERSHIP, AND LIBERTARIAN PHILOSOPHICAL DIASPORA

ABSTRACT: *In* Self-Ownership, Freedom, and Equality, *G. A. Cohen argues that libertarianism does not follow from respect for freedom, and that libertarianism cannot be grounded on self-ownership. Cohen's arguments are, for the most part, compelling. That leaves the libertarian philosopher the options of either moving leftwards—for example, along the lines of Philippe Van Parijs's* Real Freedom for All*—or embracing some form of consequentialism. Either way, the result is the abandonment of characteristically libertarian political philosophy.*

When Robert Nozick's *Anarchy, State, and Utopia* was published in 1974, it was widely hailed as a brilliant libertarian critique of the sort of liberalism John Rawls put forth in *A Theory of Justice*. Yet, in Rawls's follow-up to *A Theory of Justice*, *Political Liberalism*, which responds to his critics, Nozick's name is not even in the index, and libertarianism is given only seven pages of attention.[1] Indeed, Nozick himself seems to have renounced his libertarianism (Nozick 1989, 286–87; 1997, 1–2). Should libertarians fear that political philosophers are no longer taking their ideas seriously? That libertarianism has been forgotten?

Well, there is good news and there is bad news for libertarian philosophy.

The good news is that libertarianism has not been forgotten. In

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Self-Ownership, Freedom, and Equality (Cambridge: Cambridge University Press, 1995), Oxford philosopher G. A. Cohen presents the fruits of over two decades of mental labor on Nozick's libertarianism, its core concepts of freedom and self-ownership, and the challenges it poses to other political theories, notably Marxism. The book consists of revised versions of seven of Cohen's previously published articles, with four newly written chapters and an introduction that, in addition to summarizing his arguments, tells the story of Cohen's intellectual history and hints at how he came to take libertarianism so seriously. The book is tightly argued and, for the most part, rather convincing. And that brings us to the bad news.

The bad news is that Cohen shows that libertarianism cannot be defended in the way most libertarian philosophers want to defend it. Unless Cohen can be rebutted, libertarians—who are fond of calling themselves "politically homeless"—may find themselves philosophically homeless as well.

While Cohen's book takes Marxists to task on a few issues,[2] I will focus primarily on the problems it raises for libertarians. In what follows I will assess two of Cohen's theses: that libertarianism is not in any special respect *the* philosophy of freedom, and that libertarianism cannot be grounded on the concept of self-ownership.[3] Though his arguments are at certain points flawed, the flaws are minor and pursuit of them does not lead to a vindication of libertarianism. In fact, some of the flaws are due to what can be interpreted as too sympathetic an analysis of key libertarian concepts.[4] So, Cohen's arguments succeed. That leaves the libertarian philosopher to choose among these options: give up libertarianism (that is, libertarian *institutions* and *policy*, e.g., laissez-faire markets and minimal governments) while holding fast to one's beliefs in the value of freedom and/or self-ownership; or, keep libertarianism and give up the philosophical arguments that led to it (e.g., that respect for self-ownership requires it). And of course there is actually a third option: give up libertarianism *and* the arguments that led to it. In the last part of this article I address those options.

Libertarianism from Freedom?

In Chapter 1 and the first section of Chapter 2 of his book, Cohen investigates Nozick's claim that "whatever arises from a just situa-

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tion by just steps is itself just" (Nozick 1974, 151). In support of this claim, Nozick offers us the now-famous Wilt Chamberlain example. Imagine a scenario, D1, in which everyone has what you think is a just share of society's resources—say, an equal share—yet many people then freely choose to give a small portion of their shares (25 cents) to Chamberlain in order to see him play basketball. The result is D2, in which Chamberlain has a much greater share of resources than anyone else. On what basis could you, the advocate of the distributional principle governing D1, complain? As Nozick asks, "If D1 was a just distribution, and people voluntarily moved from it to D2, transferring parts of their shares they were given under D1 . . . isn't D2 also just?" (ibid., 161). Nozick, of course, wants us to say "yes." Cohen has a negative answer to Nozick's question, but that is not what I want pursue here.[5] What I do want to pursue is that Nozick understands the "just steps" that transform D1 to D2 to mean steps that consist of "voluntary" or "free" action. (That this is problematically ambiguous we shall see later in this section.) Since only libertarians hold that whatever arises (D2) from a just situation (D1) by freely chosen acts is itself just, libertarianism alone, it is argued, respects freedom. It respects freedom in just the way that, for example, egalitarianism, because it contains a "patterned" principle of distribution requiring everyone's holdings to be roughly equal, does not—for an egalitarian theory would have to deny that D2, which does not match the egalitarian pattern of distribution, is just. Since freedom upsets patterns, only a non-patterned theory, such as libertarianism, can be said to truly respect freedom, in Nozick's view (ibid., 153–64).[6]

Of course, this is only one of the more well-known ways in which libertarians have claimed to have a special relationship with freedom. Aside from the views of various libertarian or classical liberal theorists, the name "libertarianism" itself suggests that it is the theory of liberty. A dictionary of philosophy goes so far as to define libertarianism as a political and economic view "opposed to any social and legal constraints on individual freedom" (Flew 1984, 203). The question Cohen presses is whether this reputation is warranted. His answer is that it is not.

Any resolution to this question will need to explain what "freedom" means. In an article that forms the background to his book's second chapter, Cohen accepts the following characterization of freedom: "Doing what we wish without the interference of

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others."[7] He adds, "This is not intended as a strict definition, so we need not complain about its roughness. We can certainly accept this much: when a man cannot do what he wishes, because others will interfere, he is unfree" (Cohen 1979, 11). Based on this uncontentious understanding of freedom, which we can call the *ordinary* conception of freedom, Cohen points out the "banal truth" that "if the state prevents me from doing something that I want to do, then it places a restriction on my freedom" (55).

The implications of this banal truth, however, form the basis of a serious criticism of libertarianism, as Cohen neatly draws out in the following example:

> Suppose, then, that I want to perform an action which involves a legally prohibited use of your property. I want, let us say, to pitch a tent in your large back garden, perhaps just in order to annoy you, or perhaps for the more substantial reason that I have nowhere to live and no land of my own, but I have got hold of a tent, legitimately or otherwise. If I now try to do this thing that I want to do, the chances are that the state will intervene on your behalf. If it does, I shall suffer a constraint on my freedom. (55–56)

Since the institution of private property legitimates state interference with the actions of those who wish to occupy or use property they do not own, it demands constraints on freedom. Libertarians, who claim to rest their theory on freedom, support laissez-faire markets in which all (or nearly all) property is privately owned. Thus, libertarians, despite their claims to the contrary, support a great many constraints on freedom. "It follows that libertarians cannot complain that a socialist dispensation [for example] restricts freedom, *by contrast* with the dispensation that they themselves favour" (56). It turns out that libertarianism's relationship with freedom is not so exclusive, after all.

What leads libertarians to think it is? Cohen's answer is that libertarians are victims of "an unreflective association of ideas" (Cohen 1979, 11). By mistaking freedom for private property, libertarians blind themselves to the facts that private property limits freedom, and that even the most laissez-faire of economies are "complex structures of freedom and unfreedom" (ibid., 12). The penalty for violating capitalist property rights is as coercive as the taxation and regulation libertarians find odious. So, in advocating

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capitalism, "libertarians" no more favor freedom than "statists" do in proposing a different set of coercive laws (cf. Samuels 1993, 452ff).

At this point libertarians are likely to object to the definition of freedom we have employed thus far. What is it for me to have freedom? Freedom, they might answer, is not simply doing whatever I wish without interference from others—which, admittedly, is restricted by the laws enforcing private property. Rather, my freedom is restricted only when others prevent me from doing, or trying to do, something I have a *right* to do. This is what Cohen calls the "rights definition of freedom."[8] Now this revision alone does not yield what libertarians want (that is, a conception of freedom that private property does not restrict), since, as of yet, it remains unspecified what, in fact, I do and do not have rights to do. In addition to the rights definition of freedom, libertarians require inviolate (or nearly inviolate) rights to private property. "Now, if one combines this rights definition of freedom . . . with a claim that, in standard cases, people have a moral right to the property that they legally own, then one reaches the result that the protection of (legitimate) private property cannot restrict anyone's freedom" (59). And that is the result libertarians want.

However, Cohen points out that the rights definition of freedom will not do. We can specify three different arguments he makes against it: the ordinary-language reply, the circularity-dilemma reply, and the liberty reply.

The ordinary-language reply is that the rights definition of freedom is incorrect because that is not how we normally use the word "freedom." Whether I make you unfree is not a matter of the type of behavior (e.g., just or unjust) I restrict. My actions make you unfree if they place you in a certain condition. And it is perfectly intelligible that I can make you *unfree* even when I am prohibiting you from doing something you have no right to do, or punishing you for having done such a thing. As Cohen writes, "A properly convicted murderer is rendered unfree when he is justly imprisoned" (60).

Some might object that Cohen is relying on some form of linguistic essentialism here. We should note, though, that Cohen's reply need not depend on the notion that words have essential meanings, or even that "freedom" is univocal. All Cohen is doing is pointing out that there is an established practice when it comes to the use of "freedom" and "unfreedom." If libertarians want to develop an argument against the conventional usage of "freedom,"

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they are free to do so; but it is hard to think of what would count as a good reason for changing the definition of a word. The only reason I see that could play a part in such an argument is a bad reason: that we must reject the conventional usage of "freedom" because the truth of libertarianism as a normative theory requires us to. This is a bad reason because it would only convince those who already think that libertarianism is true, and that is the very thing we are trying to settle.

If it were the case (which I think it is not) that Cohen's ordinary-language reply wrongfully rules out the rights-definition of freedom, it would be helpful for libertarians to come up with some replacement for the words *free*, *unfree*, and their cognates, for cases in which one is prohibited from doing what one has no right to do. (In other words, what—if not "freedom"—is restricted when, for example, a person is prevented from walking across property she does not own?) Libertarians might object to this request, arguing that there is no problem with (rights-definition) "freedom" and (ordinary-usage) "freedom" being homonyms. But, as we shall see, the risk of conceptual confusion here is great, and libertarians would be doing political philosophy quite a favor by providing the requested neologism.

The kind of conceptual confusion just mentioned prompts Cohen's second reply to the rights definition of freedom, the circularity-dilemma reply. Suppose that the rights definition of freedom is, contrary to the previous argument, correct. Here is a scenario that illustrates Cohen's charge of circularity. Libertarians would argue that Allison has the *right* to be unhindered by interference with her private property—for example, the confiscation of her property by propertyless Ben. That Allison has this right means that it would be wrong for Ben to confiscate Allison's property. It would be wrong, libertarians would like to say, because it would be an infringement on her *freedom*. Yet, since libertarians are committed to the rights definition of freedom, they must say that Ben's confiscation would be an infringement on Allison's freedom only if she had an exclusive *right* to use the property that Ben confiscated. So, until the rights-definition is conjoined with some account of what moral rights Allison has, we do not know if Ben is really infringing on her freedom. We might ask, "Does Allison have this right? or "What rights does Allison have?" To this, though, we could only repeat the first sentence describing the scenario, the line

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we were trying to explain (or a synonymous statement): "Libertarians would argue that Allison has the right to be unhindered by interferences with her private property, for example, the confiscation of her property by propertyless Ben." If in response to this we ask "Why?" we get the third sentence of the scenario: "It would be wrong for Ben to confiscate Allison's property, libertarians would like to say, because it is an infringement on her *freedom*"—and so on. Thus, if we stick with the rights definition of freedom, we end up in a circular argument in which rights are defined in terms of freedom, which is then defined in terms of rights, which are then defined in terms of freedom, and so on, and from which no justification of these particular rights or freedom is forthcoming.[9]

Is there a way for libertarians to avoid this circle? There is, but only by abandoning the rights definition of freedom. For, using the ordinary definition of freedom, it would be easy to explain how Ben's confiscation of Allison's private property would be an infringement on her freedom: Allison would no longer be able to do what she wishes with the confiscated property, and would therefore be less free. However, once libertarians return to the ordinary definition of freedom, they must admit that prohibiting Ben from confiscating Allison's private property is an infringement on *his* freedom, namely being able to do as he wishes with Allison's property; and that would be admitting what libertarians want to deny—that protecting private property restricts people's freedom.

So libertarians are faced with a dilemma: one definition of freedom leads to circularity, the other definition away from libertarianism. Yet the dilemma is rarely confronted because of the failure to clarify what is meant by "freedom." As a result,

> libertarians tend *both* to use a rights definition of freedom *and* to take it for granted that interference with his private property diminishes its owner's freedom. But they can take the latter for granted only on the [ordinary] account of freedom, on which, however, it is equally obvious that the protection of private property diminishes the freedom of *non*-owners, to avoid which consequence they adopt a rights definition of the concept. And so they go, back and forth, between inconsistent definitions of freedom, not because they cannot make up their minds which one they like better, but under the propulsion of their desire to occupy what is in fact an untenable position. (60)

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In the next section we will see whether "self-ownership" provides a more stable grounding for libertarianism than freedom does. Before we do that, though, we should consider Cohen's liberty reply to the rights definition of freedom.

The libertarian might concede that the rights definition of freedom fails to match up with ordinary language, yet in its place suggest a rights definition of liberty. As Cohen notes, this seems to meet standards of ordinary usage: "some might say that, although a well-enforced law against rape restricts rapists' *freedom*, it nevertheless does not restrict their *liberty*, since there is no such thing as a liberty to rape" (61).[10] However, as Cohen also notes, this terminological switch fails to avoid the circularity charge. If we return to my example of Allison and Ben, we should now ask: "Would Ben's confiscation of Allison's property violate her liberty?" That depends on whether Allison has the liberty to enjoy her property without interference from others, which is the same thing as asking whether she has the *right* to do so. Yet the scenario begins, you recall, with libertarians asserting that she *does* have the right to do so. Why? Because otherwise her "liberty" (before, "freedom") is violated. But whether that is so is the very thing we are trying to figure out! Libertarians are thus stuck in a circle again. To put the problem in general terms, "liberty, when it is not identical with freedom, is freedom seasoned with justice [or rights]. But then we do not know what liberty is until we have a freedom-independent characterization of justice [or people's rights], and that is something we have not been given" (62).

We have seen that attempts to derive libertarianism from a concern with freedom alone fail: either (ordinary) freedom is no more the province of libertarianism than it is of competing theories, such as socialism, or (rights-definition) freedom is unable to justify libertarianism in a noncircular way.[11] As a result, libertarians must abandon the belief that if we are to take freedom seriously, we must be committed to private property and laissez-faire capitalism.

Libertarianism from Self-Ownership?

Some libertarians, especially of the Nozickian variety, may not be moved by the previous arguments. That, at least, is what Cohen thinks. For Cohen believes that Nozick and those who agree with

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him base their libertarianism not on freedom alone, but also and more fundamentally on a distinct notion of self-ownership. In this section, we will see if self-ownership yields libertarianism.

The self-ownership thesis holds that "each person possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and he is entitled, morally speaking, to dispose over himself in the way such a slaveholder is entitled, legally speaking, to dispose over his slave" (68). To avoid any ontological worries, Cohen is quick to clarify that "the term 'self' in the name of the thesis of self-ownership has a purely reflexive significance. It signifies that what owns and what is owned are one and the same, namely, the whole person" (69). Now if each person is a self-owner, then that person has certain rights over himself, rights to which the self-owner may be able to refer, for example, in justifying the kind of freedom he has, or in justifying the property to which he is entitled. If all that is true, then *voilà*—we have an exit from the circular pseudo-explanation that plagued rights-definition freedom. Two questions remain, though: Does self-ownership in fact tell us anything about freedom or property? And if so, does it tell us anything a libertarian would want to hear? Cohen's answers are, respectively, yes and no. Let us start with the second question.

Does self-ownership yield libertarianism? Nozick certainly thinks so. If we own our selves, then we own the parts of our selves, including our powers and talents; and if, with our self-owned powers and talents, we perform some work, then, on Nozick's view, we are entitled to keep the results of our work.[12] To deny us the fruit of our labor, according to Nozick, is to deny that we are self-owners. As he puts it:

> Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you. (Nozick 1974, 172)

One way to take issue with Nozick would be to deny that we rightfully own ourselves. But Cohen argues that even if we accept

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the self-ownership premise, we can deny that it leads to libertarianism.

To do this, Cohen devises a world with only two persons: Able and Infirm, whose names reflect the extent of each one's ability to provide for himself. "With suitable external resources, Able can produce life-sustaining and life-enhancing goods, but Infirm has no productive power at all" (94). Though each is a self-owner, Cohen stipulates that they own the world jointly.[13] Now, if they are each rationally self-interested and mutually disinterested, what scheme of resource production and distribution will they agree upon?

Suppose that Able can produce enough goods to sustain both of them. Infirm, then, would use his co-ownership of all resources to allow Able to produce anything at all only if Able agreed to produce enough to sustain the both of them. In the more interesting scenario, Able is capable of producing a surplus over that which is necessary for the two of them to survive. Here Able and Infirm will bargain over the production and distribution of the surplus. As before, if Able refuses to produce for Infirm, Infirm will forbid him from producing at all. As Cohen puts it, Able "gets nothing extra just because it is he, and not Infirm, who does the producing. Infirm controls one necessary condition of production (relaxing his veto over the use of the land), and Able controls two [relaxing his veto and using his productive capabilities], but that gives Able no bargaining advantage" (96). In effect, Cohen has devised a scenario in which egalitarians need not fear allowing individuals self-ownership, for at least a rough material equality is guaranteed by joint ownership of the external world. Thus it seems that self-ownership does not yield the inegalitarian, capitalistic society of libertarianism.

Now there is a response to this argument, namely that the very idea of joint ownership of the external world violates self-ownership. Under joint ownership, after all, Able cannot do anything without Infirm's permission, and vice versa—not even something that harms no one. Libertarians may thus be tempted to ask, "What is the point of owning myself if I can do nothing without the agreement of others?" (98). Or, along the same lines, libertarians might object that while Cohen may have stipulated that Able has self-ownership, such self-ownership is *merely formal*: sure, Able is not a chattel slave, but his self-ownership is so minimal that it has none of the things we generally find so attractive about it.

Cohen acknowledges this. In response, he has us consider Noz-

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ick's character Z, the member of the proletariat who, in a libertarian society, "is faced with working or starving" (Nozick 1974, 263). Just as Able can do nothing without the agreement of Infirm, Z can do nothing without the agreement of the capitalist. How, Cohen asks, can Z be said to have any more meaningful self-ownership than Able? If the libertarian would object to joint ownership of the world because it leads to situations in which Able's self-ownership is severely limited, then she would have to object to laissez-faire capitalism because it leads to Z's self-ownership being similarly limited. If the libertarian rejects Able's, and consequently Z's, self-ownership as too insubstantial, then she is admitting that the self-ownership of some persons in a libertarian society is merely formal. Of course, anticipating Cohen's point, the libertarian could switch positions and claim that Z's self-ownership *is* genuine self-ownership. But then "genuine self-ownership allows the enforcement of equality of condition [e.g., through joint ownership of the world], since Able's self-ownership is at least as robust as Z's" (100).[14]

Thus, again Cohen throws the libertarian onto the horns of a dilemma: either the self-ownership she values is merely formal self-ownership, which is wholly compatible with a variety of egalitarian theories, or the self-ownership she values is a more robust conception that, being absent under capitalism, leaves capitalism unjustified.

The libertarian might think there is some escape pod by which she can elude the dilemma, perhaps by denying that Able and Z share relevantly similar plights.[15] But by articulating the differences between Able's and Z's predicaments, the libertarian reaches a third horn of what becomes a trilemma (an option Cohen does not consider). Thus, the libertarian may point out that in a generic contemporary capitalist society there is more than one capitalist to which someone like Z can choose to sell his labor. Such choice provides Z—unlike Able—with the opportunity to have a say in what kind of work he does and for whom, where he lives, and what kind of life he is going to lead. We can say this choice gives Z some "autonomy."[16] But by defending Z's self-ownership with an appeal to autonomy, the libertarian makes autonomy foundational, and thus inadvertently provides a justification for such institutions as redistributive taxation; for certainly redistributing $10,000 of a billionaire's fortune to the pocket of a homeless woman will increase

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the homeless woman's autonomy and not in the least bit reduce the billionaire's. Yet libertarianism forbids redistributive taxation.

So, here is what we can call the "libertarian self-ownership trilemma":

Option 1. What fundamentally matters is formal self-ownership (Able and Z are similar in that they both have it). Implication: property egalitarianism is acceptable.

Option 2. What fundamentally matters is substantive self-ownership (Able and Z are similar in that they both lack it). Implication: laissez-faire capitalism is unacceptable.

Option 3. What fundamentally matters is something other than self-ownership, e.g., autonomy (Able and Z are dissimilar, in that Able lacks it while Z has it). Implication: redistributive taxation is acceptable.

For the libertarian, none of these options is palatable. Thus, libertarianism cannot be justified by appeals to self-ownership. Earlier, it was suggested that self-ownership might provide the grounding to rescue the rights definition of freedom from circularity, thus affording libertarianism a foundation. That would be true only if self-ownership justified the kinds of rights—rights to potentially vastly unequal amounts of private property—that libertarians advocate, and as we have just seen, it does not.

Self-Ownership: The Concept and the Thesis

At this point readers may be puzzled as to why Cohen has bothered spending so much time on self-ownership. In Chapter 6, he reprints his 1990 article, "Marxism and Contemporary Political Philosophy, or: Why Nozick Exercises Some Marxists More than He Does any Egalitarian Liberals." The article explains why, as a Marxist, Cohen was forced to grapple with Nozick's argument: because self-ownership is at the very heart of the Marxist critique of the capitalism that libertarians champion. Like libertarians, Marxists believe that the laborer is the rightful owner of herself and, by extension, of what she produces. (Unlike libertarians, Marxists believe that capitalism violates self-ownership by expropriating the laborers' product and delivering it over to capitalists.) But readers who are neither

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Marxists nor libertarians may wonder why they should care about self-ownership; whether the notion even makes sense; and if it does, what role it may play in political philosophy more generally. Cohen addresses these concerns in the new material that makes up Chapters 9 and 10.

While Cohen does an adequate job of showing that there is nothing incoherent about the concept of self-ownership, he is less successful in defending it against charges of indeterminacy. Here, the complaint is that "to own something is to enjoy some or other set of rights with respect to that thing. But one might envisage a number of importantly different sets of rights over themselves and their own powers in virtue of which we could say of people that they are self-owners. The principle of self-ownership therefore lacks determinate content" (213). Cohen wants to maintain that self-ownership is indeed determinate, so he responds by stipulating that self-ownership means "full" or "maximal" ownership over oneself.[17] This seems unnecessary, for several reasons. First, recognizing the need to stipulate a definition of the term is tantamount to admitting that the term is indeed indeterminate. But if self-ownership is indeterminate, isn't that enough to show that libertarianism does not strictly follow from affirming it? Second, it is the indeterminacy of self-ownership that contributes to the persuasiveness of the Able and Infirm example. It is far more effective to show that any definition of self-ownership the libertarian chooses fails to yield her preferred political institutions—as that example shows—than it is to rule out by fiat some of those definitions.

Third, Cohen agrees with libertarians that full self-ownership implies that "I do not (fully) own myself if I am required to give others (part of) what I earn by applying my powers" (216). This presupposition of both the Marxist and libertarian views of property is usually supported in the following manner. If I own myself, then I own my talents; and if I own my talents, I own whatever I earn with my self-owned talents. My self-ownership therefore grants me ownership over whatever I earn. If, through redistributive taxation, something I have earned is taken from me without my permission, then I cannot be said to own fully the talents I used to earn that thing. And if I do not fully own my talents, then I do not have full self-ownership. On the face of it this sounds convincing, but the inference from violating my title over what I have earned to violating my ownership of my talents is tenuous. Self-

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ownership is not enough to establish ownership of external resources.[18] To apply my talents to something is not to lose those talents. If I use my artistic talents to paint a picture, I have not lost those talents to the painting, or to the canvass, the paint, the brush, or whatever. The painting does not "possess" my talents; *I* still do. So far, so banal. Now if that painting is taken away from me—suppose it is appropriated by the state and redistributed to someone whose well-being requires art—I no longer own the painting. But I still fully own and possess my talents. To think otherwise appears to mean (bizarrely) that talents are personal physical objects that can be removed from their original possessor. But they are not and cannot. Suppose instead that, before the Ministry of Art Redistribution came knocking at my door, I sold the painting. If the state confiscates my earnings, it is not materially different from the state confiscating my painting; I still fully own my talents. So I still fully own myself. Thus, I think Cohen is wrong to say that "I do not (fully) own myself if I am required to give others (part of) what I earn by applying my powers."

Cohen defends his view with the following analogy: "Suppose that whenever I scratch my back I am required by the state to scratch someone else's. It surely follows that I lack full ownership of my hand. And the implication of non-(full) self-ownership survives when we suppose that if I scratch your back in return for your scratching mine, then some further scratching of the backs of third parties can be exacted by the state from each of us" (220–21). Everything Cohen says here is true, but as an analogy to redistributive taxation (which is how Cohen intends it), it fails. In Cohen's back-scratching example the state is (to put it pedantically) commanding *him* to have part of *his self* (namely, his hand) scratch someone else's back, and Cohen rightly identifies that as a violation of self-ownership, since ownership of anything, including one's hand, entails control of its use. But in the case of redistributive taxation, Cohen is not subject to such commands. His choices about the use of his talents (e.g., painting and selling a work of art) are his own, and his actions are taken at his own behest, not the state's. The state, by taxing him, interferes not with his ownership over himself, but with his ownership over goods or earnings external to him. It does not command him to do anything to or with his self other than what he has already chosen to do. Thus, redistributive taxation cannot be said to violate self-ownership.

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After this discussion of what the concept of self-ownership entails, Cohen asks whether or not we should accept self-ownership as a valid source of moral claims. Should political philosophers take self-ownership seriously even if they are not libertarians or Marxists? We might think that rejecting the thesis of self-ownership invites slavery, or that it denies people autonomy, or that it violates Kant's doctrine that persons be treated as ends in themselves, and that these are good reasons not only to take self-ownership seriously, but to give it considerable normative weight. Yet Cohen argues that self-ownership is quite different from, and perhaps not as important as, not being a slave, having autonomy, or being treated as an end. I will not analyze these arguments of his here—they seem quite uncontroversial to me. In a concise assessment of the normative and explanatory role of self-ownership in political philosophy, Alan Ryan writes: "The simple, but to me decisive, point is that when argument turns from the discussion of an individual's rights of free agency to the discussion of the nature and extent of his 'self-propriety,' the terminology changes but no illumination results" (Ryan 1994, 241). Taking together Cohen's many arguments on the libertarian use of self-ownership, I think one cannot help but come to the same conclusion.

Libertarian Philosophical Diaspora

We have seen, thanks to Cohen, that libertarianism cannot be justified by appeals to freedom; nor can it be derived from a commitment to self-ownership. Yet most libertarian theories allot crucial justificatory roles to one or the other of these concepts. What, then, is the libertarian to do? That depends on who we take to be "libertarian." Is a libertarian someone who derives political institutions from fundamental normative commitments to either freedom or self-ownership? Or is a libertarian someone who advocates political institutions of full private property and (so-called) minimal government? Cohen's analysis forces us to abandon what many have long taken for granted: that these two senses of "libertarian" refer to the same set of people. What was once the clearly defined edifice of libertarianism—with its foundation of self-ownership and freedom, its laissez-faire scaffolding, private property walls, and

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rooms full of free-market solutions—has fallen apart, and its residents must disperse and seek new homes elsewhere.

Libertarians of the first kind—"deontological" libertarians, we might call them—may find a new home in one of many versions of leftist political philosophy. Left-wing theorists tend to take freedom and/or self-ownership to be good in themselves, as deontological libertarians do, but they recognize that these values may require government provision of welfare to guarantee that all persons have adequate control over their lives—such that no one, for example, is in the position of Z. Such a provision is suggested by Philippe Van Parijs in *Real Freedom for All* (Oxford: Oxford University Press, 1995). Though he is not one, Van Parijs sounds like one of the recently homeless libertarians mentioned above. Appropriately enough, he calls his view "real-libertarianism." Indeed, his preferred institutions may be ones that deontological libertarians might accept, even though, as we shall see, Van Parijs himself is ambiguous as to his own reasons for accepting them.

Van Parijs starts with two claims: "freedom is of paramount importance," and "capitalist societies are replete with unacceptable inequalities" (1). If we believe both of these propositions, then, given the traditional opposition between freedom and equality, how do we reconcile them? According to the dust jacket's breathless description, Van Parijs provides a "ground-breaking solution." The solution? An unconditional basic income (UBI) for everyone. Most of the book is a defense of UBI by way of both ethical and economic arguments. As I mentioned above, though, Van Parijs is at times ambiguous. When he writes that the inequalities of capitalist societies are unacceptable, the reader is left wondering whether this is because material equality is intrinsically valuable, or whether capitalism, because of its inequalities, renders nugatory the freedom of some of its participants. If the former, then some defense of the claim is necessary, especially against objections to "leveling down."[19] If the latter, then why all the rhetoric about the "dilemma" of valuing both freedom and equality? Needless to say, if libertarians are going to find Van Parijs's theory acceptable, it will be on the latter interpretation.

Ambiguity also infects his discussion of the theoretical structure that undergirds his vision of the free society. Van Parijs writes that a free society is one that satisfies these three conditions:

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1. There is some well enforced structure of rights (*security*).
2. This structure is such that each person owns herself (*self-ownership*).
3. This structure is such that each person has the greatest possible opportunity to do whatever she might want to do (*leximin opportunity*).[20] (25)

Van Parijs recognizes that these conditions can conflict with each other. Here is his reply:

> As a rough conjecture, let me just state that a free society should give a priority to security over self-ownership, and to self-ownership over leximin opportunity. But this priority is of a *soft* kind. . . . More specifically, mild disturbances of law and order can be tolerated if getting rid of them would require major restrictions of self-ownership or major departures from leximin opportunity. . . . Further, mild restrictions of self-ownership . . . can be incorporated into the institutional framework of a free society if a good case can be made to the effect that a major improvement would result in terms of leximin opportunity. (26)

This is unacceptably vague, and though Van Parijs knows it (ibid.), it seems he is eager at this early stage in the book to begin expounding his favorite idea, UBI. Most readers may find this only a minor disappointment—after all, the book is "primarily addressed" to those who share the author's fundamental convictions (1). But for those coming from other views, such complacency may be off-putting.

Most of the vagueness drops out when Van Parijs turns to his pet proposal, the UBI. His explanation and defense of it takes up five of the book's six chapters, during which he addresses nearly all of the possible objections to it. This includes comparisons with the favored institutions of Rawls, Dworkin, and Ackerman (e.g., 65–77, 92–102), as well as facing up to economic challenges, such as sustainability (38–41, 83–84) and unemployment (203–14). I will not delve into his specific arguments, as that would take me too far afield from my reason for mentioning him in the first place: that is, that he gives an alternative, thorough, and adequately defended antipaternalistic interpretation of what institutions follow from typically libertarian theoretical commitments. His theory is just one example of where libertarians might now be led.

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However, we can also take "libertarian" in the other sense, as one fundamentally committed to private property and a government about as extensive as that of the "nightwatchman state." This kind of libertarian takes her institutional preferences as fixed, and searches for the right theory to sustain these institutions. There is a limit to this approach, just as there is a limit to how long a person can hold onto a ledge after her ladder has been kicked out from under her. The libertarian either gets a new ladder soon, or she eventually lets go—or she becomes a propagandist, picking and choosing among empirical evidence to suit her predetermined conclusions.

There are some who think a ladder may be available in the form of consequentialism, in which happiness or well-being (instead of freedom or self-ownership) is taken as the ultimate good, something that might be maximized by a characteristically libertarian social order. Whether this is the case is an empirical question that I will not pursue here. What I will note, and what is obvious, is that it may turn out that private property, free markets, and a minimal government are not the means that maximize happiness, and thus on this account would have to be rejected. If at this point our now twice-homeless libertarian switches the good again, we can at least suspect her of doing philosophy backwards—that is, starting with the answers she wants. But in the absence of a dogmatic insistence on the rightness of libertarian political institutions, libertarian consequentialists must face up to the possibility of losing their libertarianism. [21]

I mentioned towards the beginning of this article that libertarians face three options. In this section we have so far discussed the first two: giving up typical libertarian institutions while holding fast to one's beliefs in the value of freedom and/or self-ownership; or keeping libertarian institutions and looking for a new foundation for them. But now we can see how the third option—giving up libertarian institutions *and* their traditional foundations—is not radically different from the second, for it is merely the admission that, in the absence of the needed empirical evidence, there is no reason to cling to any particular set of institutions, including libertarian ones.

The bulk of this paper concerned G. A. Cohen's arguments against the project of grounding libertarianism by appeals to freedom and self-ownership. If true, his conclusion—that the project

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fails—signifies the end of libertarianism as a unified political philosophy. Some might not find this newsworthy, and some libertarians might not even find it troubling; after all, the libertarian movement was always quite diverse, supported not only by philosophers, but by the varied reasons of political scientists, economists, and historians. Others, though, may think the result is more serious, or at least disappointing. Now that libertarian philosophers have been evicted from their previously held territory and driven to either leftist or consequentialist views, it is not clear that they can in any determinate way still be called libertarian.

NOTES

1. Nozick is mentioned in a footnote on page 263. Libertarianism is addressed on pages 262–69, primarily to contrast it with Rawls's view that the proper subject of principles of justice is the basic structure of society.
2. Mostly in chapters 5 through 8.
3. These are by no means the only arguments—nor the only interesting arguments—Cohen makes.
4. Brian Barry takes this to be the defining and ultimately devastating trait of Cohen's book (that is, that Cohen takes the concept of "self-ownership" seriously at all). See Barry 1996. For Cohen's reply, see Cohen 1996.
5. Cohen points out the flaws with the Wilt Chamberlain example, and the general claim it is supposed to support, mainly in Chapter 1 of his book. Among these is the fact that the example begs the question. Nozick asks, "If the people were entitled to dispose of the resources to which they were entitled (under D1), didn't this include their being entitled to give it to, or exchange it with, Wilt Chamberlain?" (Nozick 1974, 161). Cohen points out (28) that whether (and to what degree) the people *were* entitled to dispose of their resources is exactly what is at issue, so it is illegitimate to assume, as Nozick does in that question, that their rights over their resources are full and absolute.
6. Nozick allows that some mildly patterned distributional requirements may not be subverted by free action. He writes, "Since the weaker the patterning, the more likely it is that the entitlement system [his version of libertarianism] itself satisfies it, a plausible conjecture is that any patterning either is unstable [overturnable by free acts] or is satisfied by the entitlement system" (Nozick 1974, 164). But this is not relevant here.
7. The characterization quoted by Cohen belongs to Jan Narveson.
8. In previous works, e.g., Cohen 1979, Cohen calls this the "moralized definition of freedom."
9. If the circular nature of the scenario presented in this paragraph was not apparent on the first read, note that each italicized word (except, at the

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start, the first) is the "explanation" for the previous italicized word. Also note that non-italicized occurrences—singular and plural—of the nearest preceding italicized word have the same referent (e.g., all the occurrences of "right" and "rights" refer to the same stage of the explanation as the most recent "*right*" they follow).

10. On the other hand, there is no trouble making sense of "Ben is not at liberty to sell the property," since the property belongs to Allison.
11. Some might complain that I have failed to address, regarding ordinary freedom, the principle of "greatest equal freedom." This principle holds that each person should be afforded as much freedom as is compatible with the same freedom for all, and some suggest that libertarianism meets this principle. Libertarianism, however, does not necessarily meet this principle, and more importantly, it does not meet it any more than competing theories do. On the first point, libertarianism (usually) denies persons the right of initiating the use of force against others. But nothing in the greatest equal freedom principle prohibits (as libertarianism would) that kind of free act: e.g., the freedom to punch other people's faces—for my punching you in the face is compatible with you punching me in the face, which is compatible with each person punching someone else in the face. On the second point, as we learned in our discussion of ordinary freedom, libertarianism cannot claim that it generates any more freedom than competing theories, because, by creating freedoms for some people, it eliminates corresponding freedoms for others. Thus, for example, my exclusive freedom to use my private property eliminates the freedom of all others to do so. For a more detailed critical discussion of the principle of greatest equal freedom see Kymlicka 1990, 137–45.
12. That this sounds like it could come from the mouths of the proletariat suggests why Cohen, a Marxist, found Nozick's self-ownership-based libertarianism so challenging. See his Chapter 6.
13. It is irrelevant how the joint- and self-ownership rules are enforced. Cohen suggests we imagine that a "suitably powerful external authority (e.g., God) enforces them" (94).
14. This is part of a negative argument against libertarianism, and should not be mistaken for a positive argument for egalitarianism or socialism. On this see Kamolnick 1996, especially note 26 on page 90.
15. This is a strategy Narveson pursues. See Narveson 1988, 72. I criticize this strategy in what follows. For a different critique of Narveson's response to Cohen, see Brown 1990, 442–43.
16. Here I am using "autonomy" as a convenient placeholder for the features of Z's life just described; I am not recommending that autonomy as a normative ideal be understood in such a fashion. As a normative ideal, autonomy might mean "the liberties, resources, and capabilities necessary in order for one to pursue his or her own conception of the good life." Such a view is expounded by Abisi M. Sharakiya in his unpublished manuscript, *The Moral Polity*.

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17. By which he means "self-ownership confers the fullest right a person (logically) can have over herself provided that each other person also has just such a right" (213).
18. That Cohen, in Chapter 9, seems to be denying this is remarkable in light of other arguments in his book, especially in Chapter 3. In that chapter Cohen severely criticizes Nozick's account of how people come to have ownership of goods external to themselves.
19. This is what Derek Parfit calls "the Levelling Down Objection":

> If inequality is bad, its disappearance must be in one way a change for the better, *however this change occurs*. Suppose that those who are better off suffer some misfortune, so that they become as badly off as everyone else. Since these events would remove the inequality, they must be in one way welcome . . . even though they would be worse for some people, and better for no one. This implication seems to many to be quite absurd. (Parfit 1991, 17)

20. "Leximin" describes how the distribution of opportunities is prioritized. To ensure leximin opportunity, first make sure that those in society's worst-off group (measured in terms of its members' opportunities) have more opportunities than they would have under any other available distributions. Call this distribution of opportunities L1. If no one else can be given more opportunities without depriving the worst-off of opportunities they have in L1 then leximin distribution has been achieved. If, however, this is not the case, then examine the opportunity level of the next-to-worst-off group. Make sure that those in the next-to-worst-off group have more opportunities than they would have under any other available distributions that preserve the amount of opportunities the worst-off have in L1. Call this distribution of opportunities L2. If no one else can be given more opportunities without depriving the worst-off and next-to-worst-off of opportunities they have in L2, then leximin distribution has been achieved. If, however, this is not the case . . . and so on.
21. Jeffrey Friedman—who is a proponent of a consequentialist research agenda inspired by, but not precommitted to, libertarianism (he calls it "postlibertarianism")—has made this point on several occasions. See, for example, Friedman 1990.

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Jonathan Wolff

FREEDOM, LIBERTY, AND PROPERTY

ABSTRACT: *If one values freedom, what sort of regime of property should one favor: libertarianism, socialism, or something else again? Debate on this topic has been hampered by a failure to distinguish freedom and liberty, which are both of great value, but can come into conflict. Furthermore there are many similar concepts—distinct from both liberty and freedom, yet each representing something we rightly value—which may also come into conflict with each other and with freedom and liberty. Consequently the question posed above has no easy answer.*

Libertarians typically argue that a due regard for freedom should bring us to accept the moral necessity of a severely limited, or even minimal, state. In particular, it is claimed, any attempt to redistribute legitimately held private property is an unwarranted and objectionable interference with individual freedom (see Friedman 1962). In reply to this argument, liberals and egalitarians seem to have two main options. The first is to accept that liberty leads in the direction of the minimal state, but to claim that other values—for example the relief of undeserved poverty—can outweigh the claims of liberty. The second is to argue that respect for liberty itself mandates the redistribution of property. This latter approach is favored by some critics of libertarianism on the grounds that it is both misleading and argumentatively dangerous to concede that libertarian-

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ism maximizes liberty. It is misleading because the question of what sort of society maximizes freedom is far less clear than certain libertarians would have us believe. It is argumentatively dangerous because of the high prestige of the value of liberty, and because there is no agreed way of dealing with clashes of values. If liberty clashes with some other value, how can we know that liberty shouldn't have the upper hand?

To assess this second line of argument—that the minimal state does not necessarily best advance liberty—we need to consider the relation between liberty and private property, to see the effect a regime of unrestricted individual property rights would have on individual liberty. I will do this primarily by examining some forceful arguments from the philosopher G.A. Cohen. My claim will be that the debate has been gravely hampered by a failure properly to distinguish between "liberty" and "freedom." Ultimately I will argue that the terms "freedom" and "liberty" are a distraction and an obstacle to clear thought. What is needed is a more complex array of concepts. I have no doubt that the terms "freedom" and "liberty" will be with us for a long time, but if I am right they are valued largely for their rhetorical effect, rather than their philosophical power.

The essay falls into three sections. In the first, conceptual section, liberty and freedom are disentangled. The second section presents the case that we need a still broader repertoire of concepts. A brief final section outlines the substantive consequences of the earlier discussion.

Distinguishing Freedom and Liberty

My task in this section is twofold: to show that there is an important distinction between freedom and liberty, and to show that our thinking about the relation between private property and freedom/liberty would be improved if this distinction were made explicit. To this end, I shall start by considering Cohen's attempt to unsettle the libertarian by pointing out that private property also has a negative effect on freedom.

Cohen's most prominent argument against the libertarian position runs as follows:

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> Private property pretty well is a particular way of distributing freedom and unfreedom. It is necessarily associated with the liberty of private owners to do as they wish with what they own, but it no less necessarily withdraws liberty from those who do not own it. To think of capitalism as a realm of freedom is to overlook its nature. . . . I should point out that I do not claim that anyone of sound mind will for long deny that private property places restrictions on freedom, once the point has been made. The remarkable thing is that the point so often needs to be made. (Cohen 1988, 294)

Cohen's final comment sums up the mood of many on both sides of this discussion: a feeling that one's own position is obviously correct, and that those who fail to appreciate it are blinkered, at least temporarily, by ideological factors, even when the truth is staring them in the face. He remarks:

> It is a striking feature of ideological disagreement that, in typical cases, not only does each side believe true what the other side believes false, but each side believes *obviously* true what the other side believes *obviously* false. It is likely, then that (at least) one side is not just mistaken, but profoundly mistaken. (Ibid., 290–91.)

In the work cited Cohen does not claim that some form of socialist or communist regime will do more to advance freedom than libertarianism. Rather, he argues that it is wrong to take for granted that libertarianism must be represented as the political philosophy that obviously embodies the idea of freedom. I have no quarrel with this conclusion, but I believe that the validity of Cohen's argument for it is itself less obvious than it may appear. There may be very good reasons to reject libertarianism (Wolff 1991), but I am far less sure that it can be convicted of philosophical incoherence, or even of a profound conceptual mistake.

In a recent article Cohen has returned to the theme of the relation between private property and freedom, and claims that "the Right" will not accept that how much money one has determines one's freedom:

> A standard political debate runs as follows. The Right extols the freedom enjoyed by all in a liberal capitalist society. The Left complains that the freedom in question is meagre for poor people. The Right rejoins that the Left confuses freedom with resources. You are free to do what no one will interfere with your doing, says the

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> Right. If you cannot afford to do it that does not mean that someone will interfere with your doing it, but just that you lack the means or ability to do it. The problem the poor face is lack of ability, not lack of freedom. (Cohen 1997, 41)

It is understandable that Cohen should represent "the Right" this way. If it is true that one's wealth determines one's freedom, then a free-market society, in which gross inequalities of wealth are not only inevitable but celebrated by some, will be a society of gross inequality in freedom. Consequently, if libertarians wish to depict free-market capitalism as a society of equal liberty, they must, surely, be compelled to deny that one's wealth affects one's freedom.

However, in unguarded moments, not everyone who is sympathetic with the free-market position appears to disagree with Cohen's analysis of the relation between freedom and wealth. Consider the following quotation, from an interview with Jeffrey Archer, the best-selling popular novelist and former Deputy-Chairman of the British Conservative Party:

> Nowadays, if Mary wants to go to Russia to see a Nobel Prize winner, she gets on the plane and goes. If I want to take Concorde, I walk out of my front door and get on the plane. It's such a privilege having money. It gives one such freedom too. (Archer 1993, 61)

It would seem to follow from this that the poor have less freedom than someone who can afford a Concorde ticket. Although Archer's view hardly represents orthodox libertarian thinking, he would appear to be committed to affirming that a society of unequal *freedom* can also be a society of equal and extensive *liberty*—that, after all, is presumably why he supports such a society, despite its manifest material inequalities.

One can, of course, doubt the coherence of this view, especially if one assumes that "freedom" and "liberty" are synonymous. If this were so, then the stated position would be self-contradictory. Such an assumption is implicit in, and apparently essential to, Cohen's argument. If it is correct, then, since Archer has admitted that capitalism provides unequal freedom and there can be no equality of liberty that might compensate for this inequality, there is no way to justify the association of pure capitalism with the term "libertarianism": this is, in effect, is Cohen's conclusion.

Yet it is not so obvious that we should treat "freedom" and "lib-

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erty" as synonymous. Compare what Archer said—"It's such a privilege having money: it gives you such freedom too"—with what he might have said: "It's such a privilege having money: it gives you such liberty too." The latter has quite a different flavor: one of slight corruption. It is as if money can buy you things that properly should not be bought, such as immunity from normal procedures. *Liberty* seems to have a more legalistic edge to it than *freedom*. In this sense the words are not exact synonyms, although they still might seem to be very close in meaning.

To put more distance between them, consider the following. I am *free* to do x, it is said, if there is no constraint on my doing x. What sort and degree of constraint is relevant? Cohen suggests one sufficient condition of unfreedom: "I am *pro tanto* unfree *whenever* someone interferes with my actions" (Cohen 1991, 170). Hillel Steiner goes further, claiming that I am unfree to perform an action if and only if my performing that action is rendered impossible by the action of another person (Steiner 1994, 8). Let us take this as a working definition of unfreedom, and thus of freedom.

How should we define *liberty*? There are few writings in political philosophy as well-established and unconstested as Wesley Hohfeld's analysis of rights and liberty in *Fundamental Legal Conceptions* (Hohfeld 1919), which, despite its fame and apparent relevance, has played a surprisingly minor role in this debate. Hohfeld defines a "liberty right" in the following way: I am at liberty to do x if I have no duty not to do x. Clearly if I have a duty not to do x, and this is properly enforced against me, then it will follow that I am *unfree*, by the previous definition, to do x. Yet on this account, freedom and liberty are by no means coextensive. I can have a duty not to do x —and therefore not be at liberty to do it—but still do it, and therefore be free to do it. Conversely, through illegitimate constraint I can be rendered unfree to do what I am at liberty to do. If *liberty* is defined in terms of absence of duty it becomes quite distinct from *freedom*, defined in terms of possibility.

It would be wrong to say that this has been ignored entirely in the literature. Steiner, for example, commenting on the Hohfeldian analysis, suggests that "Liberty, in this *normative, or evaluative, or rule-constituted* sense, is to be distinguished from the *descriptive* or *empirical* concept" (Steiner 1994, 60n). Cohen, too, is prepared to admit that we sometimes have different linguistic intuitions about the use of the words:

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> Some might say that, although a well-enforced law against rape restricts rapists' *freedom*, it nevertheless does not restrict their *liberty*, since there is no such thing as a liberty to rape. . . . Liberty, when it is not identical with freedom, is freedom seasoned with justice. (Cohen 1995, 61-62)

So Steiner and Cohen will say that, although there is one sense of "liberty" that is not synonymous with "freedom," there is also a second sense of liberty—call it "natural liberty"—that, if not exactly synonymous, is so close to freedom as to make no practical difference. And to this it will be added that the Hohfeldian notion of liberty plays no role in the debate between libertarians and their critics, because both are concerned about the effects of property on natural liberty, which is nearly synonymous—or in Cohen's term "identical"—with freedom.

However, I want to show that the Hohfeldian notion of liberty implicitly plays a larger role in our willingness to accept Cohen's argument than Cohen himself is prepared to grant it. To see this, consider Cohen's claim that "private property pretty well is a particular way of distributing freedom and unfreedom." The most obvious way of supporting this claim is to think of private property as a distribution of rights and duties, and to notice that what rights and duties one has partly determines one's freedoms. But if this is the claim, it is easy to see that it is premised on the Hohfeldian notion of liberty. Rules *directly* affect liberty only on the Hohfeldian notion of liberty, by creating new duties. The easy intuition that my enjoyment of property affects my freedom rests on the very notion of liberty that is not intended to be in play in the discussion. This may well explain why Cohen qualifies his claim that private property distributes freedom and unfreedom with the phrase "pretty well": on the definition of freedom Cohen favors, rules only limit one's freedom if they are effectively enforced, and, as we know, not all rules are effectively enforced all the time. Therefore an *effective* violator of another's private property is not rendered unfree by the rules of private property: whatever you actually do is, of course, possible, so you can never be unfree to do what you actually manage to do, whatever the rules decree. Cohen himself is well aware that it is the effective enforcement—not the mere existence—of rules that diminishes freedom, and his examples concern people who are "physically ejected" from trains, or who have goods that

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they have stolen "physically removed" (Cohen 1997, 42), or where there is "intervention" by the state to enforce private property rights (Cohen 1988, 293).

But not all possible examples have this structure. Suppose you own a cake, but I eat it. I have not been physically prevented from eating it, and once I have eaten it no punishment can turn the clock back and stop me from having eaten it. Therefore I was not unfree to eat it. Of course, if I am punished, it then turns out that I am unfree to engage in certain combinations of action involving cake-eating: notably eating the cake and not being punished. But perhaps I am never found out, and am psychologically unconcerned about the possibility that I might be, and so suffer no ill effects whatsoever. No acts or act-combinations are rendered impossible, so I suffer no loss of freedom. Therefore, on Steiner's analysis, *private property rights (such as yours in the cake) are not necessarily distributions of freedom and unfreedom* even though they do attempt to prescribe a certain distribution of freedom. One may therefore wonder exactly what restrictions rules of property place on individual freedom in a world of imperfect enforcement, which, of course, is the only type of world we know.

The fact that, in thinking about Cohen's argument, we so readily slip between thinking about rules and thinking about the enforcement of rules—in other words between permissibility and possibility—indicates that we may naturally have more than one conception of liberty or freedom in mind. The Hohfeldian notion—that liberty should be defined in terms of absence of duties, and hence permissibility, rather than bare possibility—will not go away. I want, as a first approximation, to suggest the following working analysis. Cohen and Steiner are correct to think that *freedom* concerns *the possibility of particular actions*. Liberty, however, concerns *the permissibility of types of actions*. (It is not suggested that this is an analysis of ordinary meaning, although it may be fairly close to some uses of the terms. Without doubt the word *freedom* is often used where on my account the word *liberty* would be much more appropriate, and vice versa.)

An action is a particular, temporal, event: my first writing this sentence: your first reading it; my eating lunch at 12:45 today; your complaining about the government earlier this week. Each of these acts will fall under various types or categories of action: such as writing, reading, eating, and talking. Steiner's account of freedom

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operates at the level of actions, not types of actions: *freedom* for him concerns whether or not a particular action—the physical act of my eating lunch at 12:45 today—has been rendered impossible by another person.

When we think of liberty, however, we most naturally think in terms of types of actions. John Rawls, for example, gives us a list of what he calls "basic liberties" in *A Theory of Justice*. These include such things as the right to vote, freedom of speech and assembly, and freedom from arbitrary arrest (Rawls 1971, 61). Each of these specify either a type of action that free citizens should be permitted to perform, or a type of treatment to which citizens should not be subjected.

There is a twofold distinction, on my working analysis, between freedom and liberty: not only the distinction between particular actions and types of actions but also between possibility and permissibility. Possibility we have implicitly understood as physical possibility. How is the notion of permissibility to work? Broadly, the more types of actions that are permitted by the law, the more liberty one has. A society where more types of action are permissible is a society of greater liberty than one with fewer permissible types. Individuals within that society can be granted differing amounts of liberty: children have less than adults, and sometimes one sex, race, or religion has less than another. Furthermore, as a punishment, we deprive people of their liberty: what is permissible for others is impermissible for those punished. Hence when we say that a criminal is deprived of his or her liberty we seem to mean this in the double sense of both freedom—physical constraint—and liberty: withdrawal of permissions. A criminal is not at liberty to do many things an ordinary citizen would take for granted. It is interesting, nevertheless, that we might well say that an escaped convict is "presently at liberty." This, I think, rests on the idea that he or she is acting *as if* he or she had permission to act in particular ways, and so on my analysis this would be a deviant, though obviously related, use of the term.

The Splintering of Freedom and Liberty

I hope I have made plausible the claim that the best understanding of "freedom" depends on considerations about the possibility of

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particular actions, while the best understanding of "liberty" concerns the permissibility of types of action. Once we have made this distinction it is tempting to ask "which should we care about: freedom or liberty?" Here Cohen's argument between Right and Left reasserts itself. The Right will say that, as political philosophers and legislators, we should concern ourselves only with issues of permissibility: we should attempt to make as wide a range of actions as possible permissible, provided that such actions do not harm others. The Left will reply that permissibility is useless for those who do not have access to the type of resources that will allow them to make use of these liberties. What should concern us is what people can actually do.

Permissibility and possibility are both important. So perhaps both sides are right. But there are two obstacles we face before we can rest content with this happy compromise. First, there will be conflicts between the two. Taxes may have to be raised to ensure a significant range of possible action for all: this would reduce the liberty of people to engage in certain transactions that, in themselves, do not harm to others: for example to buy and sell labor at its market price. It is common for this point to be brushed aside, as if no liberty is lost by such taxation. But I see no justification for such a response: it confuses the issue of whether a liberty is lost and whether its loss can be justified, which is quite another question.

So one obstacle to trying to set up a regime of both maximal liberty and maximal freedom is that this may be impossible: to fund freedom we may have to reduce liberty. But the second obstacle is that, once we have distinguished freedom and liberty, there seems to be almost no end to the further distinctions we can make.

Consider how we defined freedom in terms of the *possibility of particular actions* and liberty as the *permissibility of types of actions*. However, when we reflect that there are two distinctions here (permissibility/possibility and types of actions/actions) we find ourselves not with just two concepts but, in principle, with four: the possibility of a type of action; the permissibility of a type of action; the possibility of a particular action; and the permissibility of a particular action. Probably the permissibility of a particular action reduces to the permissibility of the type of which it is an example, so I will ignore it, but the possibility of a type of action creates a genuinely new category. Perhaps it is not possible for me to travel to Spain now, or later this year, but maybe I can next year. In other

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words, some actions of this permitted type are possible, others impossible. This naturally leads us to raise distinctions of long-term and short-term possibility, and also issues of probability: both distinctions of degree. Thus the notion of possibility is complex, and it is not clear what sorts of possibility we value most. Again it may be said that we value all sorts of possibility, but this will not help if they clash and, once again, tradeoffs are necessary. For example, should I prefer a narrow budget of present possibilities, or a wider budget of future ones?

Permissibility also turns out to raise well-known complications. There may be no legal restrictions prohibiting me from travelling to Spain, but my financial position may be such that there are no legal means of my doing so either; I can get there only by stealing money or by stowing away. This action then, although not *directly* impermissible, is *indirectly* impermissible: there are no permissible ways of achieving a goal that is, in itself, permissible.

Clearly this is not a matter of making distinctions for their own sake. There is real debate between those who think that the range of one's liberties is determined by what is directly permissible and impermissible, and those who think that such a view is a hollow, ideological sham because the real issue is one of permissible means. And, once more, we cannot have it both ways: providing permissible means may reduce the permissible range of economic transactions, or other liberties, in one's society.

We could take this fragmentation further, but to keep the discussion under control, let us rest with a four-way distinction:

a) The possibility of a particular action (my going to Spain today).
b) The possibility of a type of action (my going to Spain sometime).
c) The direct permissibility of a type of action (the legality of my going to Spain).
d) The indirect permissibility of a type of action (the legality of my doing whatever is necessary as a means of my going to Spain).

This leaves us with two questions: one of terminology and one of substance. The terminological question is which of these concepts best captures our notions of freedom and liberty. The substantive question is which of these concepts we value most, if they clash. My answer to the first question has already been given, but I concede that it does not help us answer the second. Defining freedom

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and liberty in particular ways is not enough to show that they should be preferred over similar, but distinct, values. It is to this issue that I now briefly turn.

A Society of Freedom and Liberty

What would a good society look like? One wants to say that it should contain as much freedom and liberty as possible. But at what cost to other similar values, and freedom and liberty for whom? If liberty is understood as direct permissibility of types of action it is very easy to create a society of extensive liberty for all. This is the libertarian solution: as long as the laws apply to all, we have a situation of equal liberty.

It is common for opponents of libertarianism to deny that such a society is a society of equal liberty, raising objections either about possibility of actions (whether particular actions or types of them) or about their indirect impermissibilty. Those are good objections to libertarianism but not, I think, to the idea that the libertarian model of society captures one important aspect of liberty or freedom. It is better to say that the libertarian vision ignores too much, rather than to say that it is entirely mistaken about liberty. For although we do care about the possibility of particular actions and types of action, and about indirect permissibility too, we do also care very much about direct permissibility. It has been a long historical struggle to achieve a society of equal, extensive liberty in the sense of direct permissibility. It is a truism that there have been times and societies in which whole ranges of actions were forbidden to people on the basis of their belonging to one or another group. Equal and extensive liberty—in this purely formal sense—is worth having and must not be overlooked.

Why is equal and extensive liberty worth having? Unequal liberty is incompatible with the idea of equal citizenship to which we aspire, and as far as I know unequal liberty has no serious defenders. The important question, though, can be brought out by means of a pair of examples. Suppose a type of action is illegal, but I have no desire to act in that way. Suppose another type of action is legal, and I desire to perform actions of that type, but I do not have the means to do so. If I care about formal liberty then I may well be upset to have the former liberty denied to me (even though I do

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not want to make use of it) and should be pleased to have the second liberty (even though I am unable to make use of it). But how can these attitudes be rational? There are three obvious answers. First, many people enjoy living in a society of diversity and tolerance, where a wide range of behavior is permitted, even if they follow the most conventional type of life themselves. Second, one may welcome the fact that certain forms of behavior are permissible and possible for those people one cares about, even if one is unable or uninterested in making use of the possibility oneself. Third, things change. I may not have the desire to act in a particular way now, but who knows—maybe I will at some future point. I may at present lack the means, but if my desire is strong enough maybe I will find a solution. If all, or any, of this is persuasive then these are reasons for valuing formal liberty.

It should not, though, be overlooked that those on "the Left" are correct that concern for formal liberty does not go far enough. But they should not spoil their case by overstating it. One way of overstating it is to ignore the value of liberty, as just described. Another way is to make more of their counter-case than it merits. When Cohen complains that defenders of private property rights ignore the unfreedoms involved in capitalism, he gives the example that your ownership of your land entails my lack of freedom to use it without your permission. So if I am homeless, and wish to pitch my tent in your garden, I cannot do so without your permission, and, if I ignore you, you can call the police to have me ejected if you so wish. If we assume that the police will respond to your wishes, then that action is impossible for me and I am unfree in that regard. As a philosophical point this is quite correct. But what substantive conclusions should we draw? That in a good society one could pitch one's tent wherever one wished? What type of society could offer such a liberty? Perhaps Cohen's example trades on the idea that in a good society no one would be homeless and so no one would have the need to pitch her tent on another's plot. Or that there would be plenty of land where it was permitted to pitch one's tent: that is where this type of action is possible for everyone. But a society in which anyone could pitch her tent wherever she wants—where every action is possible—would not be a model of a good, or even a free, society. It may not even be coherent.

What moral should we draw from this? Just as valuing liberty does not justify the libertarian conclusion that all that matters is an

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extensive realm of equal liberty—direct permissibility—valuing freedom does not entail that all that matters is an extensive realm of freedom (the current possibility of as many actions as can be arranged). How to draw up a compromise that gives due regard to all the concepts in play is a subtle and difficult matter, and not something I can even begin to settle here. But I think we have enough to warn us from accepting any quick argument from freedom, liberty, or something similar to conclusions about the nature of the best society.

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Richard Kraut

ARISTOTELIANISM AND LIBERTARIANISM

ABSTRACT: *In* Liberty and Nature, *Rasmussen and Den Uyl use an Aristotelian conception of the human good to provide a foundation for libertarianism. Their principal argument is that intelligence and virtue are necessary ingredients in every flourishing human life, but since these are not goods that the state can distribute to individuals, governments can play only a modest role in promoting the common good. The state best promotes the well-being of its citizens by allowing them to pursue happiness in a manner of their own choosing, and defending them against those who would invade their moral boundaries.*

As its title and subtitle indicate, *Liberty and Nature: An Aristotelian Defense of Liberal Order*, by Douglas B. Rasmussen and Douglas J. Den Uyl (La Salle, Ill.: Open Court, 1991), is an attempt to use an Aristotelian conception of nature to provide a foundation for liberalism. The kind of liberalism defended by the authors (hereafter "RDU") is a libertarian one: a liberalism that takes the principal role of the state to be the protection of the rights of individuals to lead lives of their own choosing, to acquire property and wealth, and to participate in free markets.

RDU turn to Aristotle because they think that a liberal political philosophy should not simply assume without argument that we

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have such rights. Rather, they believe that our freedom to live as we choose derives from the fact that by nature human beings can flourish only under conditions of freedom. Human well-being must be an individual accomplishment; it cannot be distributed to individuals, but must result from their own plans and efforts. This is because, by nature, we are creatures who have the capacity to reason and fashion a life that accords with our own rational decisions. A life that is scripted for us or dictated to us by others is one that conflicts with our nature as rational beings.

This melding of ancient ethics and modern politics is strikingly original. The notion of rights is commonly (and, I think, correctly) portrayed as an invention of the modern political tradition. The founding figures of political modernity—Machiavelli, Hobbes, Locke—are deeply at odds with some of the central political ideas of the ancient philosophers, and (in the case of Machiavelli and Hobbes) write in conscious opposition to Aristotelianism. Plato and Aristotle agree that ideally a state should shape the minds of citizens so that they recognize where their good lies. They associate the freedom to live as one chooses with democracy, and rank such a regime far below other constitutions. It is only in the modern era that anything recognizable as liberalism takes shape as an intellectual and political movement. All of this RDU acknowledge. Their point, however, is that if we are discriminating in our use of Aristotle—if we preserve his moral insights but reject his political errors—then we can provide liberalism with the foundation it needs. To recognize the great value of liberty, they say, we need a theory of human well-being, and Aristotle's theory, with its emphasis on the active and choosing components of human nature, is well suited to do this job.

In certain ways, I am sympathetic to RDU's project. I think Aristotelianism still has a great deal to offer, in morals and politics. I believe there is much in the liberal tradition worth preserving. And I think the two traditions, suitably modified, might be combined to form a hybrid of considerable strength and interest. But the liberalism to which I am attracted would assign the state a larger and more varied role than the one RDU envisage for it. My own positive views, however, will not be developed here. I turn instead to the question of how successful RDU are in providing an Aristotelian justification for a narrow conception of the state's role.

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Flourishing and the State

The conception of human flourishing that RDU propose contains five main ideas. First, there is the component of a well-lived human life that is the same for all, because it is based on the nature of human beings. Every good human life requires the development of rationality and intelligence. Second, these intellectual virtues cannot be developed or exercised in isolation from such moral virtues as "honesty, integrity, productivity, courage, and justice" (66). So these, too, are ingredients of every well-lived human life. Third, developing and exercising these skills is a task that each individual must do for himself. Other people can help or hinder your project of living rationally and intelligently, but they cannot formulate or execute it so that you passively receive happiness as a gift. You must perfect yourself—others cannot do it for you. Fourth, rationality and virtue are not the only goods of human life. There are many others besides them, and how many of these other goods we should pursue, and what degree of importance they are to have, is a matter that varies greatly from one individual to another, since it depends on their talents, circumstances, and tastes. Fifth, these other goods do not have their value in a way that makes them good independently of their relationship to rationality and virtue. "Human flourishing does not merely require that a human being possess health, wealth, pleasure, and friendship; he must rather attain these goods through the exercise of his own reason and intelligence" (72).

From these points, RDU infer that the state is highly circumscribed in what it can do to promote the good of citizens. The government cannot make them rational or virtuous; it cannot even contribute to their well-being by handing out money or promoting health. Since many of the elements of happiness differ from one person to another, and all of them require the initiative and planning of the individual, the government's role can only be to secure the basic institutional structure that allows citizens to pursue their conception of happiness as they perceive it. Governments should promote the rule of law, protect property, safeguard the freedom to *make contracts*, and so on. A larger role—shaping the ends citizens pursue, or providing them with all-purpose means—is beyond its competence, because of the self-directed aspect of human happiness and the diversity of human fulfillment. RDU concede that many

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individuals who live in a free society will pursue shallow goals, and will do little or nothing to promote their own well-being. But they think the state can do nothing to prevent or remedy this unfortunate situation, because it is by its nature the wrong sort of institution to address itself to these human weaknesses and failures. In essence the state is a coercive power. The state is necessary because we need an institution that threatens and punishes those who use violence, theft, or other illicit methods to invade the moral boundaries of others. The fundamental purpose of the state is to safeguard these moral boundaries, and its coercive nature makes it incompetent to perform any larger role than this. When it tries to do more, it accomplishes nothing worthwhile, wastes resources, and itself becomes an invader of individual moral boundaries.

It must be emphasized that these arguments are based entirely on the nature of human happiness and governmental power. They do not depend, as arguments for restrictions on state activity often do, on empirical considerations regarding the effectiveness of markets in generating wealth, or historical considerations about the alleged failures of governments to provide goods and services. RDU indicate in many of their remarks that they regard the market as a successful institution, and they clearly believe that wherever governments have tried to curtail or bypass markets, they have failed to surpass what the market can accomplish on its own. But they insist that these factual claims are incidental to their principal philosophical project, which is to show that the very nature of the human good places a severe restriction on the proper role of the state.

In principle, then, they are committed to saying that even if governments could surpass the market in promoting economic prosperity, it should not attempt to do so, because its regulations would infringe upon our freedom. Even if we could become wealthier by means of a governmental scheme that pumped money into our bank accounts, we would be worse off if such an arrangement required us to yield to the state our freedom to shape our lives in accordance with our own rational skills and moral virtues. Rationality, virtue, and the freedom to develop these qualities take priority over all other goods, in any proper conception of human well-being. And the kind of priority RDU have in mind is so-called "lexical" priority: no increase in economic prosperity (or in the prevalence of other sorts of resources) could justify infringements

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of our liberty. This is a moral, not an economic, defense of a restricted state, based ultimately on the nature of human flourishing.

In this same spirit, RDU conceive of private property as a moral institution, not a tool whose justification depends entirely on its effectiveness in promoting the general level of prosperity, security, or any other extrinsic goods. A purely instrumental defense of private property might allow that the material world is in some fundamental way the common possession of all, but would argue that it should be divided into individually owned pieces, because such a system of stewardship makes us all better off, in the long run. This collectivist and instrumentalist approach to property might be susceptible to considerations of efficiency or justice to introduce some degree of property redistribution by means of taxation. But RDU insist that this way of looking at property rights is fundamentally misguided: "a discussion of property rights is off to a wrong start if the first question is taken to be, 'How much of what a person produces should he or she be allowed to keep?' For us, the question ought to be the reverse: 'When, if ever, can some people interfere with the productive acts of others?'" (120).

Their answer to this question is this: So long as a person does not violate the rights of others, nothing can justify interfering with his productive acts. And nothing that results from such acts can be taken away from the individual producer. "Human beings need to be at liberty to follow their own judgments in creating or producing material goods; they also need to be free to keep, use, and dispose of what they have produced in accordance with their own judgments" (117).

Why so? Because such productivity is an expression of one's rational nature. We are not "disembodied ghosts" (116). Rather, our essence as self-directed and reasoning beings takes physical form in the way we transfigure the world. "The objects or possessions one has must be considered an extension of what one is" (118). Accordingly, if the state prevents me from disposing of the goods I have produced in a manner of my own choosing, then the core of what I am is taken from me, and I am treated as a mere means to some larger social purpose. Whether or not I need or use all the property I have, my well-being consists in exercising control over its disposition. So even if it could be used productively by others, not one bit of it can be taken by the state for this purpose, because to do so would be to sacrifice one person for the sake of others, and no

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human being should be treated in this way (77). "Taking control of another's property against their wishes can . . . be seen to be nothing less than taking control of one of the central relationships that constitute a human being's life" (127).

Aristotle on Education

Although RDU borrow some of their ideas from Aristotle, they acknowledge that there are many other elements of his political philosophy that they reject. There is nothing inherently objectionable about such selectivity; surely Aristotle was right about some things and wrong about others. Nonetheless, it may be of some value to see why Aristotle reaches different conclusions from those defended by RDU, even though to some degree his starting points are similar to theirs.

RDU take from Aristotle the idea that the central elements of well-being are intelligence and virtue, and that other so-called goods do not contribute to well-being if they are divorced from these personal qualities. Furthermore, they are one with Aristotle in their conviction that happiness is not something that one can passively receive as a gift from others; one must pursue it and achieve it through one's own efforts. But here there is a crucial difference: Aristotle thinks that although no one can hand me virtue and intelligence on a platter, neither can I achieve them entirely on my own, without the cooperation of others. The process of acquiring moral skills begins in early childhood, when one develops certain habits through the influence and training of one's parents. Parents are not the only ones who make a difference; one is also influenced by the kind of political community in which one lives. This does not mean that one inevitably takes on the moral ideas prevalent in one's time and place. But certainly the political community can significantly affect the moral training of the younger generation—if it has the will to do so. And this is precisely what Aristotle prescribes for the ideal political community he depicts in Books VII and VIII of the *Politics*. Although the children of citizens are to be brought up by their parents until they are seven years old, at that point they are all required to go to public schools, where they are trained in reading, writing, music, and other subjects. In this way, they all receive a training in virtue and become ideal citizens. Aristotle does

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not doubt for a moment that each individual must put a great deal of effort into becoming a reasoning and virtuous adult. This is a task that others cannot perform in one's place. But this does not keep him from saying that others greatly help or hinder the efforts of the developing child in becoming a flourishing adult. And surely he is right about this.

Who shall pay for these public schools? Aristotle does not explicitly address this question, but there can be little doubt that he presupposes the existence of a redistributive mechanism that had long been used in Athens and many other Greek cities. The wealthiest citizens were legally required to contribute towards such expensive public projects as the building and equipping of warships and the presentation of dramatic and religious festivals. Aristotle likewise assumes that in his ideal city those who can afford to pay for these projects will be required to do—and that in addition, they will pay the fees of teachers in the public schools. He is confident that in making these contributions, citizens are genuinely helping others to live good lives, even though the children who receive these benefits must play an active role in their own betterment. He implicitly assumes that those adults who support the public schools and other public projects are obliged to do so because they themselves have received benefits from their community that helped them to lead flourishing lives. Aristotle takes reciprocity—doing good for the city, in return for the good one has received from it—to be one of the binding forces of any successful political community. And he also assumes that wealthy citizens who use their resources to help other members of the community suffer no loss in well-being when they do so. On the contrary, this is precisely one of the virtuous activities that constitute a well-lived life.

So the differences between RDU and Aristotle are no less significant than the similarities. Aristotle thinks we need the help of others—including the citizens of our political community—if we are to flourish. He sees the state not merely as a coercive mechanism, but as an organization that can help develop the rational and moral skills that are so crucial to living well. And he sees no objection to requiring citizens to benefit the community that gave them the help they themselves needed in order to live good lives.

To highlight these differences, I have dwelled on one prominent example of public support—education—but others would serve as well. For example, Aristotle describes various measures the ideal

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community ought to take to protect the health of its citizens. Following the customs of his times, he thinks of the city as an organizer of public festivals in which all join together to enjoy drama, music, and poetry. And he thinks that cities should take measures to give each citizen a small plot of land and useful employment. In all of these ways, his state gives far more help to its citizens than RDU would allow. Although they describe their approach as "Aristotelian," one must bear in mind the many respects in which they diminish the role Aristotle himself assigned to the state. The modern liberal state, with its involvement in the education, health, and economic prosperity of its citizens, is in many ways far closer to Aristotle's city than is the much more restricted government that RDU favor.

Literacy and the State

The central question, of course, is not whether RDU have remained faithful to Aristotle, or the degree to which they depart from him, but whether their political theory stands up to criticism—whether that criticism stems from Aristotle himself, or from other quarters.

To pursue this issue, let us return to the matter of education—but rather than focus on the problem of *moral* education (which is Aristotle's principal concern), let us consider instead the far simpler skills of literacy. Of course, it is not necessary in all cultures and ages to be literate in order to lead a good human life. Nonetheless, in the modern world a nation is at a great disadvantage when few of its citizens are literate. Countries that have uneducated work forces experience widespread poverty and find it difficult to become significant players in world markets. This factor by itself has encouraged many nations to make literacy a high priority, and those that have succeeded in producing a more educated citizenry have reaped significant economic rewards. Another advantage of more widespread literacy—one that has been an important factor in Western nations—is the contribution it can make to a more democratic politics. When only a favored few can afford to enter the professions and other elite classes that influence the governing process, political decisions reflect the interests of those in power. Giving large numbers of people the basic elements of education provides

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them, at least to some small degree, with a tool they need to protect themselves against the domination of others.

What would RDU say about all of this? One can easily see how to apply a number of their ideas to this area. As we have already noted, there is nothing intrinsic to human nature or the human good that makes literacy a necessary component of flourishing. Accordingly, RDU are committed to saying that there is no reason why it should be imposed on individuals by the government. For, it will be recalled, they hold that although rationality and virtue are components of any good human life, there are many other kinds of goods as well, and the state must not dictate to individuals which of these they are to pursue. That is a decision that must be left to individuals to decide for themselves, since it is a matter of talents, circumstances, and tastes. For one person, it may be important to know how to read and write; but others might decide that these skills are of little value or interest. If the state requires all citizens to pursue the same goods, the result will be a dull uniformity.

But this line of thought is transparently unappealing when applied to literacy. An illiterate population in a modern nation-state is not one in which one finds a wonderful variety of lifestyles that collectively exhibit the full flowering of humanity. One is more likely to find instead crushing uniformity, apathy, disease, and uselessness. Furthermore, children are in no position to make informed and intelligent decisions about whether it will be to their advantage to become literate. Nor should the decisions made by parents about the education of their children be authoritative, for if they themselves are illiterate or lack foresight, they may not recognize the value of literacy to their children. If widespread literacy is to be achieved, the decision to promote it must, in many parts of the world, be made by the state, not by individuals or families. Here, the state must play a coercive role, taking children away from their parents for a part of the day, and giving them the skills they will need to lead better lives, whether or not at the moment they want those skills.

Nor would it be plausible to suggest that since reading and writing are active endeavors that we can acquire only through our individual efforts—no one can give you these skills on a platter—we must therefore be left to acquire literacy skills *entirely* on our own, with no help from others. Very few children become literate without teachers. Literacy requires the cooperation and activity of the

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child who is learning, but that does not obviate the need for external guidance.

Perhaps RDU would at this point suggest that education should be left to the market, or to charitable organizations, since these institutions use voluntary means, which are so much more respectful of human rights than are the coarse methods of the state. But note that at this stage of the argument we have moved beyond the authors' attempt to restrict the role of the state by considering the human good and the essential nature of government. We are instead asking an empirical question about the comparative effectiveness of governments and other organizations in eradicating illiteracy.

To be fair to RDU, it must be emphasized that they devote little attention to literacy and education. When they do comment briefly on such matters (153-54), they address themselves to problems that face schools in the United States, and do not ask how their political philosophy should be applied to the reduction of illiteracy in other nations. Nonetheless, it is appropriate to test their ideas by extending them to other parts of the world, because they are putting forward a general theory of the proper role of the state, not a specific remedy for the ills of American society (or wealthy modern states in general). Their thesis is that the state must restrict itself to protecting moral boundaries between individuals, because only in this way can we have the liberty we need to flourish. But the great benefits that literacy programs have brought to certain parts of the world suggest that their conception of the state's proper role is far too narrow. The role played by the state in combating infant mortality and disease provides further evidence that something has gone amiss in their arguments.

Taxation, Coercion, and Virtue

Where have Rasmussen and den Uyl gone wrong? Let us return to their idea that when the state taxes some in order to give to others, it acts immorally because it takes what does not belong to it. Their question is: Why should anyone be forced to contribute some of what he has earned through the sweat of his brow to the education or health of the children of his fellow citizens?

One component of an answer to this question is that many of those who have accumulated wealth have had significant help from

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the coercive apparatus of the state. It is the state that has helped protect them and their property from assault and theft. It is the state that stands behind commercial contracts and threatens defaulters with punishment. It is the state that maintains trust in the banking system, protects savings, prosecutes fraud, and prohibits monopolistic acquisitions. It is the state that helps educate children to become trustworthy members of the stable social order without which life would not be worth living.

Can we depend on and expect to benefit from all of the governmental services that smooth the ways of the modern legal order and economy, and refuse to pay for those projects that are manifestly beneficial to a large number of citizens? If it could be shown that the very existence of taxation, no matter how simple the mechanism or how low the rates, does great harm to those taxed, then there might be some moral objection to this institution. But is there any plausibility to the claim one cannot live a good human life because of the very fact that one is subject to some degree of taxation? So long as tax revenue is put to good use—for example, by bringing literacy and health to many—and allows those taxed to lead flourishing lives, is there a serious moral objection to it?

RDU's political principles commit them to prohibiting the state from forcibly taking *anything* from private earnings or resources in order to promote the common good. Their idea is that I have a right to keep all that I have, and the decision about how to use it must rest with me alone, because the liberty to do as one pleases with what arises from one's productive activity is such a fundamental component of an individual's well-being that nothing could justify even the slightest abridgment of it. The government cannot tax anyone, however wealthy he is, and no matter what social good would be accomplished, because liberty takes priority over all other considerations, and must never be diminished to the slightest degree.

What has forced RDU to this extreme position? One cannot help noticing that the weight they place on liberty is structurally parallel to the weight certain moralists have always placed on virtue and moral principle. A common feature of every moral system of antiquity (excepting Epicureanism and Skepticism) is that one kind of good—moral virtue—must never be sacrificed for the sake of other goods. The modern moral tradition of which Kant is the best-known representative takes an equally stern position regarding

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moral duty: moral principles must never be violated, even when doing so might produce a great deal of happiness. RDU are equally opposed to paying attention to how much good one might accomplish by this or that social policy or political system, if such measures limit the discretion individuals have over their material resources. (They doubt that taxes do much good, but they try to convince us that there is a deeper objection than this.) Their opposition to taxation rests on their belief that it undermines moral virtue: without the liberty to make one's own decisions about what one has produced, the inner spiritual quality of our lives would be lost. As the stern moralists have been saying since antiquity, no social or individual benefit could justify the loss of the moral dimension of human life.

But this is precisely where their argument seems to be at its weakest. For it must be asked: why is it necessary to virtue that one have complete discretion to act as one pleases and to do as one chooses with one's resources? Aristotle himself sees no such necessity. He regards virtue as the central element in human well-being, but treats with dismissive contempt the "democratic" conception of freedom, according to which the citizen must be allowed the widest possible latitude to live as he pleases, in a manner unregulated by the state and its laws. Aristotle thinks that the city does nothing contrary to the good of individuals when it directs them to do what is right or when it threatens to punish them if they go astray. It tells them, for instance, to perform the acts of a courageous person by standing up to the enemy in battle. Of course, Aristotle insists that a fully virtuous person will do the right thing precisely because it is right, and not as a mere means to avoid punishment or win extrinsic rewards. But he does not think that the proper motivation of truly courageous individuals is undermined by their awareness of the existence of a law that threatens punishment against those who show themselves to be cowards. And surely he is right. Such a law, coercive though it may be, does not undermine the love of virtue, any more than a law requiring parents to support their children undermines parental love. Laws that entitle children to a certain level of care from their parents protect them from indifference or abuse, without in any way diminishing the love many parents do have for their children.

RDU disagree, but they offer only assertion, not argument, for their position. They write: "The reason that the state is not an ap-

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propriate vehicle for the promotion of virtue is that coercion is necessarily destructive of moral agency. . . . Coercion . . . can force a behavior that is 'good,' but at the expense of the presence of a good intention" (211). Even *encouragement*, they think, undermines genuine virtue: "Virtuous actions are willed for their own sake by the agent undertaking them. . . . Thus even if the state, *per impossibile*, could non-coercively direct or encourage appropriate forms of behavior, there would still be no virtue because of the missing intentional component on the part of the individual agent" (212). The state must not require (or even encourage) citizens to do anything that is socially useful, because that would at best produce good behavior and social benefits, but not the kind of motivation that genuine virtue requires.

This claim, as I have just argued, is mistaken. But it also seems to create a further difficulty for RDU by casting doubt on the legitimacy of even the minimal level of governmental regulation that they favor. They are not anarchists. They think there is a legitimate role for the state to play: namely, the protection of the moral boundaries between individuals. But how can they justify using coercion to safeguard these boundaries? They would seem to be committed to saying that when the state threatens to punish those who would assault or steal from others, it prevents those who are subject to the law from having the proper motives for keeping within their own moral boundaries. That giving people the liberty to attack and plunder others may have disastrous consequences can, for RDU, have no relevance, any more than can the consequences of the other libertarian policies they advocate. RDU hold that liberty must not be infringed for the sake of social benefits, because it alone provides the necessary conditions for virtue and human flourishing. Since they think that the free decisions of a virtuous person are undermined by coercion, they are evidently committed to accepting a radical and unwelcome conclusion: the state must let each of us choose between predation and restraint, come what may from such liberty. For this, and this alone, would allow us to act from purity of motive and retain our virtue, a precious good that must not be sacrificed at any cost.

Recognizing how close they are to anarchism, RDU might want to concede that the state must restrict our choices to some degree—whenever the costs of freedom are simply too great. But once they agree that sometimes it is legitimate for the state to con-

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sider the social benefits of restricting liberty, the bright line they seek to draw between their conception of liberalism and a more robust variety becomes clouded. They will have no good reason to resist the idea that freedom should be restricted whenever doing so enhances the well-being of all members of the community. And any political philosophy that seeks a foundation in an Aristotelian conception of well-being will be naturally and reasonably led to conclusions that give the state a far larger role to play than the one that RDU assign it.

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David MacGregor

IT AYN'T RAND

ABSTRACT: *Chris Sciabarra's* Ayn Rand: The Russian Radical *offers a novel view of the founder of Objectivism. Sciabarra contends that Rand was influenced by Hegelian and Marxist themes that dominated Russian thought during its Silver Age, particularly the doctrine of internal relations. Yet while it is true that key Hegelian and Marxist concepts, such as the dialectics of work and the master-slave relationship, are features of Rand's radical outlook, Sciabarra fails in his major argument that Rand's dialectical method presents an alternative to that of Marx and Hegel.*

Ayn Rand believed in a capitalist marketplace full of extraordinary people who have achieved "the full integration of mind and body, reason and emotion, the conscious and selfconscious, the articulate and tacit," as Chris Sciabarra writes in his remarkable exposition of Rand (*Ayn Rand: The Russian Radical*, University Park: Pennsylvania State University Press, 1995, 305). For Rand, capitalism is an "unknown ideal," a system nowhere near reaching maximum potential even after a run of several hundred years. Sciabarra explains that "an *unimpeded* market that rewards astrologers, coke dealers, and prostitutes is not Rand's goal." Rand's ideal includes a rich underlying

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culture that fosters rational conduct rather than palm reading and casino gambling. Her vision springs from "foundations in ontology, epistemology, psychology, and ethics. This is why Rand sees an inseparable relation between the personal and the political, between reason and freedom" (293-94).

Sciabarra's book explores Rand's philosophy of "Objectivism" in three parts: its intellectual roots in Russia; its formal structure, and what the author calls its "radical social implications" (9). I explore these areas below, and conclude with an assessment of this unusual text.

From Petrograd to Hollywood

Sciabarra argues that the celebrated American libertarian philosopher was also a "dialectical thinker" who imbibed a heady mixture of Marx and Hegel at the University of Petrograd during Russia's intellectual Silver Age, "an era of cultural flourishing that had begun in the final decade of the nineteenth century and had culminated by 1924, in the aftermath of the Bolshevik Revolution" (31). In this Slavic hothouse, Symbolist poets mingled with mystics and religious cultists, and Neo-Idealism tinged by Nietzsche and Dostoyevsky ruled the universities. Many Russian philosophers studied in Germany, and most "followed Hegel in seeking the identity of thought and being" (36). Nineteenth-century Russia's strong affinity for Hegelian dialectical thought formed a pathway for Marxism.

Although by the time Rand was in college, Russian Marxism was hardening into a state dogma, it remained open to such thinkers as Nietzsche and Kant. Lenin himself emphasized the supreme importance of Hegel to the Marxist enterprise. Sciabarra cautions that he can find no direct evidence for the influence of Hegel and Marx on Rand, and admits that she herself would have vehemently denied the link. Sciabarra's thesis is difficult to prove conclusively with the available evidence. Rand's academic records have disappeared, and she "burned her philosophic diaries and fictional outlines long before she came to the United States. . . . Very little of Rand's American journals have been made public, and none of the published entries date prior to 1934" (84). But he demonstrates persuasively, I think, that Rand's thought cannot be properly understood apart from the consideration of German dialectics.

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The Russian Revolution occurred when the future Ayn Rand, Alissa Rosenbaum, was 11 years old. She befriended one of Vladimir Nabokov's sisters (whose father was a minister in the short-lived Kerensky government) at a famous gymnasium for girls in Petrograd and discussed revolutionary politics. With Petrograd crumbling, the Rosenbaums fled to the Crimea. Ironically, the future enemy of statism benefitted from the new Bolshevik regime's educational reforms after returning to Petrograd. The Soviet Commissariat of Enlightenment lifted university admission restrictions against women and Jews, and shortened the university term from five years to three. Rand graduated just as a wave of purges against individuals who could not prove they had a proletarian background decimated the student body. Even while Rand attended Petrograd University, however, living conditions were primitive and political repression stifled free debate. Rand would claim later that the Marxist education she was forced to endure taught her to think critically. "No matter what you are taught," she wrote, "listen to it critically, whether you agree or not. And if you disagree, formulate your own reasons. . . . Under the Soviets . . . I learned a great deal, but only in that way" (79).

Sciabarra devotes an entire chapter to N. O. Lossky, a prominent representative of Russian neo-Idealism, and (perhaps) one of Rand's teachers (27). Like Hegel, Lossky regarded logic as a key to the underlying structure of the universe. He struggled against dualism, ultimately uniting dichotomies of thought in a mystical universe. According to Sciabarra, Rand rejected Lossky's mystical standpoint but inadvertently accepted the distinctive mode of Russian dialectical thought that Rand was exposed to throughout her university career and that Lossky expounded. However, there are doubts that Rand attended Lossky's courses: the renowned philosopher was relieved of his teaching duties in 1921, during Rand's first year at the University of Petrograd, and he left for Germany late in 1922. But Sciabarra argues that Rand most likely attended Lossky's special lectures given at a university annex in the fall and winter of 1921–22. "Young Alissa Rosenbaum," Sciabarra concludes, "had been among the very last students taught by Lossky in his native homeland" (91).

Upon her arrival in America in 1926, Alissa Rosenbaum changed her name to Ayn Rand and began a career as novelist and screen writer. Rand's philosophy became an integral facet of her art. "She could not pursue her literary projects without gradually articulating

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a philosophical framework. And she could not apply her philosophy without expressing values concretely in stories, screen plays, dramas, and novels." Rand's literary and philosophical enterprise was aimed, in her words, at "the projection of an ideal man." This individual—who would take part in the perfect marketplace Rand puts at the center of her philosophy—is constantly endangered by the twin evils of communism and religion. In "Red Pawn"—and also in her first novel, *We the Living*—Rand brought these opposites together, claiming they both "subjugated the individual to an allegedly higher power" (97–99). Believers prostrated themselves before God; Communists worshiped the state.

Rand's next novel, *The Fountainhead*, published in 1943, brought her worldwide fame. Her idealistic, striving hero, Howard Roark, battles the conventions of mainstream architecture and defeats the nefarious characters who would cripple his soaring creations. The atheistic protagonist's most dangerous opponent is Ellsworth Toohey, a "spiritual communist" who would subordinate the individual to the masses. Sciabarra contends that Toohey represents the Russian "mystic or spiritual union of all people in society" that Rand vilified (110).

Rand wrote scripts for 1940s movies that featured idols of the silver screen like Gary Cooper, Patricia Neal, Jennifer Jones, and Joseph Cotton, and developed into a skilled propagandist for capitalism. Her debut as a public intellectual came with a condensed version of her first nonfiction work, "The Moral Basis of Individualism," which appeared as "The Only Path to Tomorrow" in *Reader's Digest*. She joined a circle of right-wing thinkers that included Channing Pollock, Henry Hazlitt, and Ludwig von Mises, a member of the Austrian school of economics and teacher of Nobel laureate F. A. Hayek. Sciabarra notes that "Rand championed the Austrian school of economics in her later nonfiction essays." She also became a leading moral disciplinarian of Hollywood, contributing an anticommunist tract to the Motion Picture Alliance for the Preservation of American Ideals "that posited a stark battle between Freedom and Slavery, between republican government and dictatorship" (112–13). She gained particular notoriety during the 1947 investigation by the House Un-American Activities Committee of the Red Menace in Hollywood. "Rand," related Ring Lardner Jr. (1995,261),

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said that the film *Song of Russia* gave a distorted picture of how things were in Russia. It showed Russian children smiling. She had been there until 1929, I think, and said children never smiled there. She testified after Louis B. Mayer did, and was attacking MGM for having made the picture.

Extreme critical reaction from left and right convinced Rand that her third novel, *Atlas Shrugged*, had achieved the philosophical synthesis she hoped for. The novel concerns the struggles of Dagny Taggart and Hank Reardon to succeed in a business world that is slowly being suffocated by the state. Eventually they join with John Galt, a brilliant inventor, and construct a capitalist paradise in the mountains of Colorado. In a broadcast carried across the United States that ingeniously preempts an urgent message from the President, Galt spells out (in a 60-page speech "which took Rand two years to complete") the philosophical principles of Objectivism and sparks a successful general strike. The victorious entrepreneurs return from the mountains to erect "a truly human society" (116, 115).

Rand never achieved her ambition to author "a systematic formal treatise" on her philosophy, Objectivism, though she did produce a number of influential anthologies, including *The Virtue of Selfishness: A New Concept of Egoism* (1964), *Capitalism: The Unknown Ideal* (1967), and *The Romantic Manifesto* (1971). Her philosophical essays filled the pages of Rand's house organs, *The Objectivist Newsletter* (1962–65); *The Objectivist* (1966–71); and *The Ayn Rand Letter* (1971–76). At the peak of her fame in the 1960s, Rand straddled every form of the popular media and her "philosophy was mass marketed through the rental of taped courses." The Rand empire suddenly imploded in 1968 as a schism between Rand and her two closest associates, Barbara and Nathaniel Branden, splintered the Objectivist movement. "In later years it became apparent that the schism was inextricably tied to a collapsing love affair between Rand and Nathaniel Branden" (120–21). Rand withdrew from public life a few years later and died in 1982.

The Philosophy and Psychology of Objectivism

Drawing on the writings of Rand and her followers, Sciabarra traces the central elements of Objectivist philosophy, a school of

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thought that has grown beyond the boundaries initially set by its founder. According to Sciabarra, the doctrine of internal relations underpins the entire Objectivist enterprise. This is the idea of organic unity, in which every part of a whole is vitally connected to every other part, and the properties of each member are determined by its relation to the whole. N. O. Lossky, Rand's supposed mentor in Petrograd, proffers the example of a musical composition. "A piece of music is a complex whole in which its constituent elements form an organic unity. Each part is in harmony with the others, and all parts exist for the whole" (64). The philosophy of internal relations compelled Rand to approach social problems in a holistic manner similar to Marx's. Thus, for example, Rand believed that the problem of racial discrimination "cannot be disconnected from broad epistemic, psychological, ethical, political, and economic factors" (178).

Rand eschewed cosmological assumptions about the ultimate nature of reality, and settled for a minimalist realism. External reality is independent of what people think and feel about it; but "consciousness is the faculty of perceiving and understanding reality" (134). Like the Russian dialectical philosophers she encountered in her youth, Rand saw reality as primary while consciousness depends radically on existence. Hegel's critique of Kant, according to Sciabarra, plays an unacknowledged role in Rand's philosophy. Rand, like Hegel, attacked Kant's view that the faculties of perception and cognition can never reach the ultimate ground of reality. Both Rand and Hegel argued that consciousness is capable of disclosing the true character of the universe. Interestingly, each put forward the human digestive process as proof that the relation of human beings to their environment is hardly a subjective matter.

Another Hegelian aspect of Rand's philosophy is, according to Sciabarra, the identification of reason with knowledge and practical action. In his famous essay on Hegel, *Ludwig Feuerbach and the End of Classical German Philosophy*, Friedrich Engels (1969, 347) suggested that the linkage of thought and action was conclusively demonstrated by the world-shaking Industrial Revolution. Rand makes a similar assertion. "Prior to the emergence of capitalism," expounds Sciabarra, "the connection between knowledge and praxis was not fully appreciated. It was only with the application of reason to the production of material goods that human beings

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began to recognize the inseparable link between the conceptual faculty and survival" (167).

Sciabarra explores Objectivist psychology by drawing on the work of Nathaniel and Barbara Branden, Rand's followers until the late 1960s breakup. Rand distinguished the "feelings" of animals from the emotions of human beings "that are a complex product of their conceptual awareness" (181). She saw no conflict between reason and emotion, suggesting that emotion is (in her words) "a form of undeveloped reason." She blamed religion for the false contrast between reason and emotion common to Western thought, and claimed that "reason was the *only* spiritual endowment" (182). Rand populated her novels with protagonists who exemplify harmony between reason and emotion. "Truly *human* beings," she thought, "do not supplant their ability to feel with their ability to reason" (186).

Sciabarra records his own discomfort with what he sees as Rand's intellectualizing of emotion.

> It is as if the tensions between these two spheres could be dissolved by viewing emotion as merely an unarticulated form of thought that is amenable to change. Rand . . . once boasted that she had never experienced an emotion that clashed with her intellect for more than a day—suggesting that she was able to articulate and fully grasp every emotion she had ever experienced, and that it was relatively easy to identify and alter the context from which an "inappropriate" emotional response emanated. (186)

Rand dismissed sexist ideology that would confine women to the home, but she felt that women collaborated in their own oppression. She called herself an "anti-feminist" and "man-worshiper" and condemned feminism's embrace of egalitarianism and interventionist politics (199). She viewed homosexuality as a disgusting moral lapse. According to Sciabarra, Rand's aberrant views on these matters have been transcended by her followers, who have adopted "a highly dialectical view of psychology" that inadvertently affirms Rand's legacy of Russian dialectical thought (201).

Sciabarra traces Rand's literary aesthetic to its Russian roots, noting that her chilling aphorism, "art is the technology of the soul," echoed Stalin's dictum that the writer is "the engineer of human souls." Moreover, Rand's artistic idealization of the free market was cousin to the Soviet practice of Socialist Realism. "Like Dos-

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toyevsky and the other writers of the Golden Age of Russian literature," remarks Sciabarra, "Rand created characters based on the ideas they embodied" (208).

Perhaps Rand's most powerful contribution is her ethical theory. She consistently supported reason over the ideal values of religionists and the materialist worldview of the communists. "Both demand the surrender of your mind," she wrote, "one to their revelations, the other to their reflexes" (Rand quoted, 231). Rand condemned Kant's separation of reason and spirituality, fact and value. "Values are a kind of fact emerging from an objective relation between existence and human consciousness" (235). The primary value of human existence is life. To sustain life honorably, human beings must act on what Rand calls the cardinal values of Reason, Purpose, and Self-Esteem, which entail the corresponding virtues of Rationality, Productiveness, and Pride.

Rand's celebration of the virtues of productive work is perhaps her most obvious borrowing from Hegel and Marx. She saw human labor as a creative process that brings together material and spiritual aspects of human existence. Like Hegel, she exploited the link between work and self-esteem. In portraying creative labor as the means through which an individual constructs his or her own personality and gains recognition from others, Hegel lay the groundwork for Rand's worship of the productive self. Neither thinker meant to justify personal actions that wantonly sacrifice the well-being of others. For both, such selfishness is the root of evil, even though for Rand, *true* "selfishness" is the highest virtue. Like Hegel and other dialectical philosophers, Rand had to transform the accepted meaning of certain terms (such as *selfishness*) in order adequately to express her philosophy.

The powerful similarities between Rand and Hegel and Marx reach across the realm of politics. It is true that Rand's love affair with private property and the entrepreneurial spirit would have embarrassed Marx. However, he might have agreed with her suspicion of government, just as he shared the Objectivist view that religion is comparable to drug addiction. Similarly, Hegel would have been comfortable with Rand's glorification of private property and he might have gone a few miles with her along the capitalist road. Also, he shared Rand's equation of reason with freedom. But Hegel would have been appalled at Rand's occlusion of the state.

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The Radical Rand

The third section of Sciabarra's book explores the libertarian, secular, and humanistic political implications of Objectivism. Sciabarra shows how Rand's analysis of power relations closely resembles Hegel's vision of the master-slave relationship. Hegel contended that the struggle between lord and servant eventually establishes the two as mutually recognizing, independent selves. Rand projects a similar dialectic, though, according to Sciabarra, she was more interested than either Marx or Hegel in its psychological dimensions. Marx substituted class struggle for Hegel's master-servant dialectic; Rand saw government as chief oppressor of the individual. Rand's pursuit of psychology carried her thought toward a critique of American culture that resembles Gramsci's discussion of hegemonic power. She believed that only a thoroughgoing revolution could rid the United States of the oppressive forces that corrupted the nation's pluralistic spirit. Unlike Gramsci, however, Rand wished to preserve capitalism while stamping out the "antirational, ancient cultural practices" which distort the free market (324).

Rand idolized the market but she found few good capitalists. Most business people are tainted and compromised by their relationship with the state. Agreeing with Mises and the Austrian School, Rand saw the mixed economy as a great evil. Indeed, she attributed practically all the ills of the capitalist economy to state intervention. "Such business organizations as the National Association of Manufacturers and the various chambers of commerce had done more than any other group in U.S. history," Rand thought, "to establish a neofascist, corporatist form of statist collectivism" (334). Rand's critique of the link between big business and government dovetailed with that of the left academy in the 1970s, though neither side seemed aware of the similarity. Moreover, Rand understood the symbiosis between foreign wars and arrogant corporations. "*Atlas Shrugged* depicts a statist society in which there is a deadly alliance between government, science, and big business" (339). Rand's intense dislike for the Soviet Union made her a cheerleader for the United States in the nuclear arms race.

Rand opposed U.S. conservatism not only because of its tendency to compromise with statism, but because of its affinity with race hatred. She believed that folksy Ronald Reagan was a "moral

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monster" because he would impose racist and anti-abortion politics on the American people (349). Similarly, she was appalled by the mysticism and religiosity of Alexander Solzhenitsyn. No supporter of family values, Rand argued that many families were prisonhouses of deceit and oppression.

Assessing Sciabarra's Rand

Marx (1976, 102) famously inverted Hegel's method "in order," he said, "to discover the rational kernel within the mystical shell." According to Sciabarra, Rand performed a similar operation on Marx, though with a much different outcome. While Marx's materialist dialectic yields (in his words) a "positive understanding of what exists [and] simultaneous recognition of [capitalism's] negation, its inevitable destruction," Rand's dialectical vision "rejects traditional antinomies, but embraces the morality and practicality of the capitalist system." For Sciabarra, Rand's philosophy offers an alternative to Marxism, which has collapsed "as a theoretical paradigm and a political force. Rand's alternative . . . redeems the integrity of dialectics as a radical method by rescuing it from its mystical, collectivist, and statist incarnations" (14).

Sciabarra fails in this, his major argument. Rand does not provide an alternative to the dialectical standpoint of Hegel and Marx. On the contrary, Rand's entire mode of thought is trapped within the duality of statism and capitalism. She does not transcend this dichotomy but reinforces it. Sciabarra appears indifferent to this pernicious flaw, perhaps because it is one that (to a degree) characterizes Marx's viewpoint as well—though not Hegel's.

An admirer of Rand in high school, Sciabarra completed his Ph.D. under Bertell Ollman, who came into prominence in the 1970s with a book entitled *Alienation: Marx's Concept of Man In Capitalist Society. Alienation* and other works by Ollman are frequently cited by Sciabarra in his discussions of dialectical method and the philosophy of internal relations.

According to Ollman (1971, 32–33), Marx's dialectic involves the philosophy of internal relations, an outlook first definitively presented by Hegel, who saw that "the thing under examination is not just the sum of its qualities but, through the links these qualities (individually or together in the thing) have with the rest of nature,

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it is also a particular expression of the whole." Under Ollman's guidance, Sciabarra found that the doctrine of internal relations also plays a major part in Rand. "Much to my amazement," he writes, "I discovered provocative parallels between the methods of Marxian social theory and the philosophic approach of Ayn Rand. Both Marx and Rand traced the interconnectedness of social phenomena, uncovering a startling cluster of relations between and among the institutions and structures of society" (8).

Ollman (1971, 52) suggests that the dialectical method, in concert with the philosophy of internal relations, "is a way of viewing things as moments in their own development in, with, and through other things." It is an approach "which concentrates on looking for relationships, not only between different entities but between the same one in times past, present and future." Finally, dialectic concerns a "method of exposition," the way a subject is organized, and the terms used to convey it. The "dialectical sensibility" that Sciabarra detects "in every aspect of Rand's project" closely follows the outline rehearsed by Ollman.

> Rand's dialectical method was dynamic, relational, and contextual. It was dynamic because it viewed specific factors in terms of their movement over time. It was relational because it traced the interconnections between and among factors. It was contextual because it related these factors to their wider context. (18)

The theory of the state developed in Ollman's work is not far removed, in some ways, from that held by Ayn Rand. In common with most Marxist thinkers, Ollman (1972, 219) sees the state as an embodiment of evil that would disappear, along with class oppression, in the pure air of communism. Since the state is part of capitalist society it must, according to the philosophy of internal relations, bear the same stigma as the larger community. "The state Relation is a facet of the broader class Relation; the two emerge together, are dependent on one another, and in communism are destined to disappear together." Rand disagreed that the state is an instrument of class rule, but she fully accepted Ollman's view that "the actual institutions of the state exercise a hostile dominion over the individual," and must form no part of a truly free society.

The similarity between Rand and Marx on the state is emphasized by Sciabarra. "Just as Marx seems to have endorsed an anarchis-

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tic utopia in the final stages of communism, so Rand assimilated anarchistic elements in her vision of the ideal government." Rand would allow only a very limited political administration in her ideal society. "Its proper functions are to provide police, armed services, and law courts for the protection of individual rights and the adjudication of disputes." Sciabarra admits that Rand's "ahistorical" vision of the state bears no resemblance to any actual government, past or present. Where Marx remained silent about what communism would look like, Rand offers little detail on the future of the state. "Like capitalism, Rand's voluntary political association remains an *unknown* ideal" (279, 282–83). For both Marx and Rand, there is a radical disjunction, an unbridgeable duality between the past and an ideal future. "I am not a government planner," acknowledged Rand, "nor do I spend my time inventing Utopias" (quoted, 363).

Ollman (1972, 59, 60) concedes that his "commonplace" version of dialectical method is "purposely tailored to fit very loosely." The method cannot be used "as a means of predicting or proving things" for this would "endow it with a body and a content it does not have." Provided the laws of dialectic are used only "as descriptions of the broad patterns in which change occurs . . . embarrassing questions . . . never arise." The problem with Ollman's account is that it amounts to a trivialization of the dialectic. It would be difficult to imagine a philosopher or social thinker who didn't employ this "commonplace" model of dialectic in some fashion, including Ayn Rand. Sciabarra's success in portraying Rand as a dialectical thinker partially stems from the amorphous definition of method he took from Ollman.

Rand's dialectical perspective, notes Sciabarra, "sees . . . opposing points of view [such as idealism and materialism] as being half-right and half-wrong. Consequently, at times, her resolution contains elements of each of the rejected positions." Similarly, mind and body, thought and reality, "cannot be fully understood in the absence of the other, since each is an inseparable aspect of a wider totality." For Rand, every system "has a past, a present, and a future," and entails "internal conflicts or 'contradictions' that require resolution." Finally, "the dialectical thinker seeks not merely to understand the system but to alter it fundamentally" (17–18). These abstract principles certainly form a part dialectical method, but they are far from the whole story.

Yet Sciabarra unwittingly puts his finger on a key defect in both

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Marx and Rand. The unresolved dualities set up by both thinkers between an ideal society and the present, between the state and a community of freely associated individuals, are connected to a faulty realization of dialectical method, as it was originally put forward by Hegel.

The key to Hegel's dialectic is the idea of freedom for the individual human being. Hegel's philosophy is an attempt to adumbrate this idea, to provide it with an institutional existence in the state, to discover it in the workings of human history, and to show its development in the spheres of art, religion, and philosophy. As Hegel (1971, 239) puts it in the *Philosophy of Mind,*

> When individuals and nations have once got in their heads the abstract concept of full-blown liberty, there is nothing like it in its uncontrollable strength, just because it is the very essence of mind, and that as its very actuality.

Ollman (1972, 118) asserts that the concept of freedom in Marx, which he defines as "the full development of man's powers," "only has application in communism." In Rand also, true freedom awaits the coming of an ideal, non-statist, capitalism. For Hegel, however, freedom is not compartmentalized in the future; it is an essential characteristic of human history, and is embodied primarily in the living connection between the individual and the state. Hegel finds transhistorical evidence for this idea not only in medieval and modern societies but in the civilizations that preceded them. The struggle for recognition—the war between master and slave—forms the heart of progress throughout history.

> As regards the historical side of this relationship, it can be remarked that the ancient peoples, the Greeks and Romans, had not yet risen to the notion of absolute freedom, since they did not know that man as such, man as the universal "I," as rational self-consciousness, is entitled to freedom. On the contrary, with them, therefore, freedom still had the character of a natural state. That is why slavery existed in their free States and bloody wars developed in which the slaves tried to free themselves, to obtain recognition of their eternal human rights. (Hegel 1971, 174)

For Hegel, history concerns the establishment of rational freedom in human relationships, especially the growth of democratic

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means and procedures of governance (MacGregor 1998). Sciabarra mentions Karl Popper's (1971) critique of Hegel as an authoritarian thinker and suggests that Rand's "vision of a free society" transcends the "inexorable totalitarianism" of Hegel's worldview (14). Yet Shlomo Avineri's *Hegel's Theory of the Modern State* (1972) demolished the conventional picture of Hegel as an authoritarian and recognized his achievement as a democratic theorist. Since Avineri, a host of studies have confuted Popper's distorted account of Hegel's politics. Hegel was critical of democracy because it failed to achieve its professed goal of equal representation in politics. "The problem with democracy, in Hegel's view," writes Howard Kainz (1997, 55), "is that it holds to an overly abstract idea of individual input and influence on government, and it lacks the precise mediating agencies which are necessary to facilitate that input and influence." The constitution of Hegel's state in the *Philosophy of Right* outwardly resembles the familiar outlines of the liberal democratic state. There is no unbridgeable chasm between his ideal government and present-day political administrations. But Hegel's ideal government retrieves the corporate spirit of solidarity and community that has been lost in market relationships. "The proper strength of states resides in their [internal] communities," writes Hegel (1991, 331). And the best way to rally this strength is through a system of popular democracy. In one of the most remarkable statements on democracy in the history of philosophy, Hegel makes this brilliantly clear.

> For some time now, organization has always been directed from above, and efforts have been devoted for the most part to this kind of organization despite the fact that the lower level of the masses as a whole can easily be left in a more or less disorganized state. Yet it is extremely important that the masses should be organized, because only then do they constitute a power or a force; otherwise they are merely an aggregate, a collection of scattered atoms. Legitimate power is to be found only when the particular spheres are organized. (Ibid.)

According to Rand (1964, 108–9), government is required mostly as a coercive force to protect private rights. For Hegel, however, a paramount concern of democratic government must be to protect individual and public rights against greedy private interests, such as those extolled by Rand. He argued that "the revolutions of recent

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times"—meaning the French Revolution and its progeny throughout Europe—were aimed at recovering rights that the state had given over, one by one, to private hands. "The right of reason has been asserted over against the form of private right. . . . This explains the people's struggle against the magnates in our states" (Hegel 1995, 224–25, 227). Before the Revolution of 1789, corporations and associations of civil society took advantage of the "weakness of the state to secure privileges for themselves." "There were classes and individuals," writes Hegel, "who possessed as purely private rights, rights belonging to the state, especially in regard to taxes (e.g. freedom from taxation) and jurisdiction."[1] Public rights must be protected, and the people have to prevent governments from being dominated by the priorities of the market (which Hegel called the "system of needs"). "The state," by which Hegel meant the political community as a whole,

> must not allow the purposes of the state based on need to take root within it, but must constantly draw them back within its substance; its attitude to them is merely negative. If a corporation adopts an attitude counter to the universal purpose of the state, if what is private seeks to use the state merely for particular purposes, then the state appears as a coercive power. . . . The state's right of coercion enters into play when the state departs in any respect from what is ideal. (Hegel 1995, 228)

Unlike Marx's communism or Rand's capitalist ideal, Hegel's state never grows free of contradictions. Confrontation between the forces of private interest and those of the public good is a permanent feature of the human condition. The threat posed by private interests is required precisely to "give life" to the community and to reawaken the need for universality (Hegel 1995, 228).

As an instrument of the limited form of consciousness Hegel called the "understanding," Rand's free market and the minimal regime required to support it expressed a certain kind of rationality, one that is celebrated as much by Hegel and Marx as it is by Rand. But the requirements of "reason," as opposed to the understanding, are filled by the democratic state rather than the market. (Failure to distinguish between these two forms of consciousness, and the types of government associated with them, gravely damages Francis Fukuyama's [1992] thesis that full-blooded capitalism represents Hegel's "end of history.") Today the minimal demands of a society

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of rational freedom would include universal education, child care, and health care; protection of human rights; full employment and equal opportunity for jobs and careers; care of the environment; guaranteed mobility rights; national defense; an equitable distribution of income and wealth; and meaningful opportunity to participate in decision making in the community and the nation. Rand, of course, saw most of these as illegitimate intrusions of statism. In the full flush of victory over Soviet-style communism, neoliberal governments are trying to "privatize" many of them—transfer them to the market—and abandon those that cannot be served by the private sector. This would aggrandize one side of the binary statism/capitalism dichotomy, failing to realize that freedom requires both sides.

Managerial theorist Henry Mintzberg (1997, 75, 77) warns that "the belief that capitalism has triumphed is now throwing the societies of the West out of balance, especially the United States and the United Kingdom. That the imbalance will favor private rather than state ownership will not help society." Market rationality concerns the rights of customers and clients versus the providers of goods and services. The state revolves around the much different, and higher, rights of *citizens*. "Most of the services provided by government," Mintzberg argues,

> including highways, social security, and economic policy, involve complex trade-offs between competing interests. Tom Peters captures this idea perfectly with a story about getting a building permit to enlarge his house. I don't want some bureaucrat at City Hall giving me a hard time. . . . I want proper, quick, businesslike treatment. But what if my neighbour wants to enlarge *his* house? Who's City Hall's customer then?[2]

In *Capitalism: The Unknown Ideal*, Rand (1967, 167) identifies "socialized medicine" as one of the worst scourges of "the moral cannibalism of the welfare-statists." She refers to the brave struggle of Saskatchewan doctors against an implacable government, "which did not hesitate to force them into slavery at the point of a gun." The 1962 Saskatchewan doctors' strike heralded the foundation of medicare in Canada, certainly one of the most admired health-care delivery systems in the world (although under constant attack by privatizers). The incomes and expertise of Canada's physicians

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(even in Saskatchewan) rival those of any professional group on the globe. More importantly, Canadians of every class and walk of life are equally eligible to receive the best medical treatment available. Along with most Canadians, Mintzberg (1997, 76) doubts that health delivery would be improved by adopting the private-ownership model advocated by Rand.

> Business is in the business of selling as much as it possibly can, maintaining an arms-length relationship controlled by the law of supply and demand. I have no trouble with that notion—for cars, washing machines, or toothpaste. But I do for health care. For cars, washing machines and toothpaste most intelligent buyers can beware, as the expression goes, and we have protective mechanisms in place for buyers who cannot beware. But *caveat emptor* is a dangerous philosophy for health care and other complex professional services. Sellers inevitably know a great deal more than buyers, who can find out what they need to know only with great difficulty. In other words, the private ownership model, much as it provides "customers" with a wonderfully eclectic marketplace, does have its limits.

Hegel was a prophet of the "mixed economy" that Rand despised. Yet it would be a great mistake to place Marx, who "stood Hegel on his head," in Rand's anti-statist camp, despite his condemnation of bourgeois politics. Marx's *Capital* pioneered in documenting the history of government intervention, in the form of the English Factory Acts; and Marx saw the Ten Hours Bill as the great emancipator of human labor (MacGregor 1996). Marx's focus on the ameliorative actions of the state reflected the legacy of Hegel's dialectical method. He was certainly wrong in predicting that capitalism would be succeeded by Communism, writes John Cassidy (1997, 254),

> but, just as certainly, [capitalism] didn't survive in the Dickensian form that Marx had witnessed. During the century following his death, governments in industrialized countries introduced numerous reforms designed to improve the living standards of working people: labor laws, minimum wage legislation, welfare benefits, public housing, public-health systems, inheritance levies, progressive income taxes, and so on. These ameliorative measures would have been labeled "socialism" in Marx's day; indeed, he prescribed many of them in the "Manifesto," and it is difficult to see how capitalism could have survived without them.

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Rand's distrust of government, Sciabarra avers, was a result of her Russian upbringing. The conflict between individual and collective is a staple of Russian culture and philosophy. Rand dealt with this antagonism by blotting out one side of it. Rand has contributed something of importance to our understanding of individual freedom. But the other side of freedom, as Hegel recognized, involves cooperative determination of human destiny, the struggle for democratic governance. Here Rand leaves us empty handed. Perhaps the young Alissa Rosenbaum, embarking on her voyage to America, presaged the agonized transition of her homeland from communism to capitalism, from worship of the state to deification of the market. With no democratic tradition to anchor it, the nation rushes from one extreme to the other. How could Rand have guessed that her ideal society, like Marx's, would find its most fervent admirers in the land of the Czars?

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DOES SIMPLICITY BRING LIBERTY?

ABSTRACT: *In* Simple Rules for a Complex World, *Richard Epstein claims to be focusing on legal simplicity, and on the link between legal simplicity and a legal system less intrusive on individual liberty. It turns out, however, that Epstein's conception of simplicity is itself soaked with the substantive idea of individual liberty. The consequences of this are that the claim that legal simplicity brings individual liberty (and legal minimalism) becomes true by definition, and that Epstein avoids taking on the important and interesting questions of whether and when legal simplicity, more conventionally understood, produces less legal instrusiveness and thus, under Epstein's own conception, more liberty.*

In the Fall of 1970 I found myself at Fort Campbell, Kentucky, a United States Army base devoted, in part, to basic training—the process by which new recruits such as myself were indoctrinated into the norms and rules of the United States Army, in particular the norms and rules of being a private in the United States Army. Although the methods the Army and its drill sergeants used to accomplish this task could hardly have been called subtle, one message was in fact more subtle than most. On virtually all of the grassy areas were signs saying "You Are Not Authorized to Walk on the Grass." These signs carried two messages, or so it seemed to me then, and so it still seems to me now, more than a quarter of a century later. The first message, of course, was simple—don't walk on

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the grass. The second message, however, emerges from the difference between "Don't Walk on the Grass," or "Keep of the Grass," on the one hand, and "You Are Not Authorized to Walk on the Grass," on the other. The former suggests a default rule of liberty, pursuant to which the addressees of the rule are permitted to do anything that is not prohibited. That is why the former messages are prohibitions: they trigger an exception to the default rule. The latter message, however, suggests that the default rule is an across-the-board prohibition on all activity, such that no activity is permitted unless specifically authorized. The signs that I recall were merely reminders of the fact that the default rule for privates in basic training was very simple—"Don't."

The default rule that I inferred from the "You Are Not Authorized to Walk on the Grass" signs—i.e., "Don't"—has the simultaneous properties of being both maximally liberty-restraining and at the same time maximally simple, suggesting that simplicity as a property of rules or norms is unrelated, or perhaps inversely related, to the liberty-protecting capacity of those rules or norms. Yet in *Simple Rules for a Complex World* (Cambridge, Mass.: Harvard University Press, 1995), Richard Epstein appears to believe otherwise. Epstein appears to believe that the property of simplicity, independent of the substance of a rule or law, has liberty-protecting tendencies, and that is the claim with which I want to take issue here. In challenging Epstein, I will not engage the question of whether Epstein's libertarianism is a good or a bad thing, nor even the question of whether background principles of liberty somewhat less libertarian than Epstein's are a good or a bad thing. I will assume for the sake of argument, and only for the sake of argument, that a strongly libertarian version of a principle of liberty is a desired end, and will question whether simplicity in rules or in laws can be expected to be a useful means to that end. Therefore, I will be unconcerned with the substantive content of Epstein's rules, and will be concerned only with simplicity and complexity as properties of individual rules, individual laws, or of full sets or systems of rules or laws.

The Meaning of Simplicity

Standard dictionary definitions define simple as "having or composed of only one thing, element, or part," or "not involved or

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complicated" (American Heritage 1992, 1682). Consider this, then, the ordinary sense of "simple." Yet this property of simplicity, when applied to rules or laws, appears to be independent of the reach of those rules or laws. An instructive example is the category of *insects*. In several important respects this is quite a simple category. First, the category can be specified briefly—in fact, in one word. Second, the category is widely accessible to ordinary people without reliance on expert knowledge. True, many people think that arachnids (spiders) are insects, even though they are not. And there may be other similar cases of widespread but mistaken knowledge about the contours of the category, although the fact that I cannot think of any strikes me (not surprisingly) as some evidence for the proposition that most people navigate the boundaries of the category of insects rather easily without the assistance of entomologists. The third aspect of its simplicity, related to the second, is that the number of debatable applications is dwarfed by the number of non-debatable ones. For most people, professionally trained or not, there are comparatively few uncertain applications of the word "insect," as compared to, for example, "weapon," or that standard jurisprudential chestnut, "vehicle."[1] In H.L.A. Hart's terminology, the category of insects is a category with a very large core of settled meaning and a very small penumbra (Hart 1958 and 1961). A rule or law triggered by the simple category of insects would in the ordinary sense be a simple rule or law.

Yet despite the fact that the category of insects appears simple in a number of ways, it is important not to let the simplicity of the specification of the category lead us to ignore a very salient fact about insects—there are a lot of them. There are trillions upon trillions of insects, almost every one of them easily identifiable as an insect without any entomological assistance. Conversely, almost everything that is not an insect—another very large category—is equally identifiable even by laypeople as a non-insect. If a Supreme Being were to order the extermination of all insects, the designated exterminators would have a truly enormous job ahead of them, but we would not expect them to have a great deal of difficulty in figuring what the job was. Any rule using the category of insects as its factual predicate, therefore, would have a very broad application even though it was also a very simple rule (Schauer 1991).

This "simple" example thus suggests, as do the signs at Fort Campbell, that the coverage or scope of a rule might not be a func-

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tion of its simplicity, and that the simplest of rules might at the same time be the most expansive. If this is the case, then what is the particular idea of simplicity that motivates Epstein, and is there any reason to believe that simplicity in his sense has liberty-producing tendencies? As a property of norms, does simplicity have a liberty-inclining valence? The example of insects suggests that perhaps it does not, but we must still look more closely at what simplicity means to Epstein.

In arguing that simplicity in legal rules and legal systems fosters liberty, Epstein recognizes the importance of specifying the concept of simplicity with which he is working, and in doing so he not only appears to depart from the ordinary sense that we find in the dictionary and use in everyday talk, but also explicitly takes issue with Peter Schuck's analysis of legal complexity (the opposite of simplicity) in terms of density (the tendency of a set of rules to cover the minute details of a transaction), technicality (the necessity of consulting experts in order to understand the rules), differentiation (the extent to which a set of rules emanates from multiple and potentially conflicting sources), and uncertainty (the extent to which the application or non-application of a rule can be determined by looking to a single question of fact or a small number of facts) (Schuck 1992). For Epstein this list is not only itself insufficiently simple (although the question whether it is a good thing for an explanation to be simple is not obviously closely related to the question whether it is a good thing for a rule or a legal system to be simple),[2] but it ignores what Epstein believes to be the most important component of legal simplicity: "What is the cost of compliance, both public and private, with any given legal rule? Here the obvious connection is that the cheaper the cost of compliance, the simpler we can say the rule is, even if it is also at the same time foolish, perverse, and counterproductive" (25).

Unfortunately, by *defining* "simplicity" in terms of the costs of compliance Epstein makes it difficult to assess which formal properties of rules might in fact produce low compliance costs. Suppose we had a very lengthy set of rules, but we had as well a system in which schoolchildren were instructed in the content and meaning of these rules, and in which (as in Chile, for example) the various important codes dealing with traffic, corporations, taxation, and business licensing were not only written in moderately accessible language, but were also widely available at almost every newsstand

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at low cost and assembled in a user-friendly way. In such a system, complexity (in the ordinary sense of that term) might be highly compatible with low compliance costs. Indeed, insofar as complexity commonly provides local specificity (imagine a highly complex law that specified the responsibilities of individuals by proper name rather than by the group or category of which they were members), complexity frequently fosters not only narrowness (since complex rules often, even if not necessarily, use their complexity to create exceptions to simpler rules of more general application), but accessibility and ease of application as well. Or suppose, following Bentham (1970), that we had a highly complex legal code but that we eliminated (most of) judicial lawmaking, wrote the code in ordinary English, and made it unlawful to give legal advice for money. This complex system might well produce comparatively low compliance costs: certainly that is what Bentham himself supposed. Conversely, suppose all of our laws looked like the equal protection clause of the Fourteenth Amendment, which prohibits states from denying "the equal protection of the laws"; or like section 1 of the Sherman Antitrust Act, which prohibits "contracts, combinations, and conspiracies in restraint of trade"; or like Securities and Exchange Commission Rule 10b–5, which, in part, prohibits "devices or artifices to defraud." Under the ordinary sense of what the word "simple" means, these are simple rules, but their pervasive indeterminacy, a feature not unrelated to their simplicity, has generated substantial compliance costs.

Epstein acknowledges that "rules that look fearfully complex in fact may be quite simple in practice as long as it is easy to avoid their sting" (25), and he follows Schuck in citing the notoriously obscure Rule Against Perpetuities in support of this proposition. Because the Rule as understood can easily be circumvented by a "standard savings clause" (26), Epstein argues, the compliance costs are quite low, and the Rule does not qualify as a complex one if complexity is weighed, as Epstein wants us to weigh it, on the scale of enforcement and compliance costs. But suppose such savings clauses were unenforceable, and suppose as well that lawyers who drafted a will or trust that ran afoul of the Rule Against Perpetuities were to lose their license to practice, or be required to take a year's worth of refresher courses. Now the costs of compliance would rise astronomically, but—and this is my central point—with-

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out any change in the complexity of the rule, at least as complexity is conventionally understood.

Epstein is of course entitled to raise, and is to be given credit for raising, the important issues of whether the costs of compliance with law are too high, whether there are too many lawyers, whether there are too many laws, and whether the high levels of lawmaking and legal compliance and high numbers of lawyers bear a negative causal relationship to the level of liberty in society, holding all other factors constant. These are important questions, and I will address them in the next section of this essay. But by redefining the word "simple" to include all of these questions and to exclude many interesting questions about simplicity as ordinarily redefined, Epstein takes off the agenda many questions that one would think he would want left on. For example, do broad and open-ended rules, which invite (or demand) judicial lawmaking in common-law fashion, raise or lower the costs of compliance with law?[3] Is there a correlation between the common law (as opposed to the civil law) and liberty, and, if so, can we exclude a sufficiently large number of other variables so as to conclude that this relationship is causal? Do broad and clear rules (Don't Do Anything Unless I Say So) enhance or diminish liberty because of their simplicity? In other words, is there any difference between the effects of a rule like "You Are Not Authorized to Walk on the Grass" and a rule like "Keep Off the Grass"? Are the complexity and length of many modern laws typically devoted to adding exceptions, such that simpler versions of the same rules would have more rather than less coverage? Are rules produced by lawyers typically longer, or more complex, or more obscure, or more of something else, than rules produced by laypeople? And so on.

Some members of the Critical Legal Studies movement, most notably Duncan Kennedy (1976), have argued that legal form does have a substantive effect, and that precise, often complex, and relatively easily applied norms ("rules") incline towards individualism, while less precise, more flexible, and more open-ended norms ("standards") incline more towards altruism and communitarianism. Similar claims can be found in some feminist literature, with theorists such as Carol Gilligan (1982) arguing that the under-inclusive and over-inclusive character of categorial or rule-based decision-making reflects a male-based and not necessarily desirable form of decision-making (Schauer 1991), compared to the more particularistic forms of decision-making that are more commonly preferred

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by women, and are more likely to foster empathy and mutual understanding.

Such claims maintain that certain dimensions of legal form make a substantive difference, even holding constant the substantive content of the norm itself. A rule that says "Speed Limit 55" is substantively different from a "Drive Reasonably" rule, even if both are designed to induce drivers to go at the same average speed, and even if both in fact produce the same average speed. Or at least that is what we would expect Kennedy and Gilligan to argue. Against Kennedy and Gilligan one might expect to see two different types of rejoinders. One would maintain that form does not have a substantive effect, such that the difference between two rules is to be measured almost exclusively by their differences of substance, and not very much by their form. If complexity, the nature of the decision-maker, and other dimensions of form make a difference, this rejoinder would maintain, it is not a difference that over a large enough number of instances can be expected to incline, substantively, one way or another.

Alternatively, one could argue against Kennedy and Gilligan by maintaining that they are right about the substantive effects of legal (or rule) forms, but that they have mistaken the direction of the effect. Perhaps, for example, rule-based decision-making does have a substantive effect, but by subjugating individual differences among cases, and by making it more difficult for people to claim that *their* case is in some way special or different, the effect is positive when compared to more particularistic forms of decision-making, which suppress individuality (occasionally referred to as "atomism") and foster community and empathy. Or perhaps other dimensions of form have substantive effects not even identified by Kennedy and Gilligan.

The title of Epstein's book holds out the promise that he will enter this controversy, and that he will claim that simplicity, more or less conventionally understood, would have the effect of promoting liberty, more or less conventionally understood. By defining simplicity in terms of low compliance costs, however, Epstein not only makes it too easy to avoid important and interesting questions about which dimensions of legal form produce higher or lower compliance costs, but also misses the opportunity to argue directly that simplicity itself is to be valued for its substantive contributions to the value of liberty. Perhaps Epstein missed this opportunity be-

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cause the cost of compliance is what most interests him. But perhaps it is because, as some of my examples suggest, simplicity as more conventionally understood appears to diminish liberty. Simplicity is typically the marker of regulatory breadth, and I would suspect (short of a careful empirical examination, I can only suspect) that a survey of our simplest legal rules, in the conventional sense of that term rather than Epstein's, would reveal that many of them, because of their unqualified breadth, are among those that most severely restrict individual or private prerogative.

Complexity and the Costs of Compliance

Despite my quarrel with what Epstein has taken off the table, he has earned the right to have us address what it is that he does claim, even if the claim is more assisted by a stipulative definition than it need be. And what Epstein does claim is that simplicity, defined in terms of lower compliance costs, is, other things being equal, more liberty-promoting than rules that have higher compliance costs. So we can now reformulate Epstein's claim as the claim that legal regimes with lower compliance costs produce (or preserve), *ceteris paribus*, more liberty than regimes with higher compliance costs.

At one level Epstein is plainly right. Compliance costs, after all, are *costly*. If we assume, (moderately) non-controversially, that the costs of compliance are borne to some significant extent by the object of a regulation, and if we assume as well that one can exercise more liberty (albeit partly in the positive liberty sense of that term) with more assets than with fewer assets, then the obvious conclusion is that there will be more liberty in a world with higher compliance costs than in a world with lower compliance costs, all else being equal.

Epstein's claim, however, is larger than this. He believes that the major threat to liberty as he understands it is the presence of "Too Many Lawyers, Too Much Law" (the title of his introductory chapter). In linking these two phenomena, Epstein claims that too many lawyers cause too much law, even though some might claim that the causal arrow goes in the opposite direction. Although the claim that an excess of laws produces an excess of lawyers is not implausible, I will assume that Epstein's conclusion is right (although, as one

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who believes that the proliferation of gum disease is caused by an excess of dentists in a fluoridated world, my intuitions might be thought suspect).

Even if the proliferation of laws is produced by the proliferation of lawyers, it takes some work to get from this to claims about compliance costs. Suppose that a hyperactive city council, perhaps in the grip of a surplus of lawyer-legislators, passes a law requiring all houses in the community to be painted blue on the exterior, on pain of a penalty of a civil fine of $1000 a day for every day in which the house remains unpainted. No exceptions are permitted. Since my house is yellow, and since by no stretch of the imagination will I be able to claim that my yellow house is blue, I paint my house, at a cost to me of $5000, in the service of a goal of community uniformity that I do not share.

Now it is clear that the existence of this law has cost me $5000, and in one sense this is the cost of complying with the law. Yet although there is a $5000 cost of complying with the law, it still seems odd to consider this law as containing compliance costs. Compare, for example, a similar law couched in terms of "unattractive" rather than "blue"; or one that governed interior paint rather than (highly visible) exterior paint; or one that required all homeowners to file forms annually reporting on the color of their houses, so that the Community Appearance Commission could determine which houses were in compliance and which were not. In any of these cases, the costs of the enforcement *system* would be considerable, quite apart from the direct burdens imposed by the regulation; that is, these laws would, over all, cost more than the first variant in achieving the same or similar goals. In such cases, it might be useful to think of enforcement costs as compliance costs, insofar as they were borne by those subjected to the rule.

Once we see that there are costs of this variety, costs that are a function of the enforcement mechanism *qua* mechanism, it seems odd to think of the $5000 cost of the first law as a compliance cost. It is simply the cost of doing something I do not want to do. Such costs are undoubtedly costs, and central to Epstein's argument is that such costs are frequently greater (individually or in the aggregate) than the benefits they supposedly bring. Insofar as this is correct, it supports the basic libertarian insight that in turn supports many of Epstein's substantive claims for legal minimalism. Yet once the "costs of compliance" are simply the costs or burdens of being

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forced to change one's behavior, it appears yet again that the idea of simplicity drops out. If there is a compliance cost in forcing me to paint my house even under circumstances in which the enforcement costs are very low (as they are when the punishment is both high and certain for widely observable behavior that undeniably violates the law), it is a cost that seems best understood simply as the cost of a loss of liberty. The idea of the cost of compliance, just like the idea of simplicity, masks the central issue. In defining simplicity in terms of the cost of compliance, and then in defining the cost of compliance in terms of the loss of freedom to engage in legally unregulated conduct, Epstein indirectly uses the ideas of simplicity and compliance cost to make his substantive argument for liberty, when it would seem far more straightforward to confront the virtues of legal minimalism directly.

The Problem of Preferences

Yet let us think still further about the costs of compliance on Epstein's own terms. More specifically, I want to address the question whether we can make sense out of the idea of the cost of compliance, as Epstein understands it, without taking more account of the antecedent preferences of the targets than Epstein does in this book. Consider, for example, the legal prohibition on cannibalism. This legal prohibition has absolutely no effect on most of us. If the laws prohibiting cannibalism were to be repealed tomorrow, it would make no difference to me, for I have no antecedent preference to engage in the behavior. For me, therefore, the cost of compliance with the laws prohibiting cannibalism is zero. Much the same could be said about the laws prohibiting murder, rape, child molestation, and indecent exposure, because for me, although obviously not for all others, the laws prohibit what I would not have done in any event, and thus are superfluous. By contrast, the laws requiring me to drive at 55 miles per hour on a clear dry day, compelling me to pay my income taxes, and prohibiting me from driving a car that has not been inspected by the Commonwealth of Massachusetts are not superfluous, for they constrain me from pursuiting my antecedent preferences.

What these examples suggest is that even understood in terms of the simple costs of complying with a regulatory burden, we cannot

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make sense out of the idea of the cost of compliance without a careful look at what it costs people to comply, and we cannot do this unless we have a good idea of what they would otherwise have done. This, however, casts further doubt on the claims of simplicity, regardless of how simplicity is understood. Consider, for example, the difference between how in 1998 we would create a regulatory system to deal with the problem of discrimination on the basis of sexual orientation and how we would create one to deal with the problem of discrimination on the basis of the presence of an appendectomy scar. Assume, perhaps counterfactually, that the same number of people possess both traits. And assume that the regulator wants to discourage the same amount of discrimination in both cases.[4] Even with these two assumptions, it seems bizarre to suppose that the regulatory system necessary to deal with the first case, in which many people have antecedent preferences to discriminate, will be the same as the regulatory system necessary to deal with the second case, in which virtually no one has a preference to discriminate.[5] Not only will one regulatory system be structured very differently from the other, but one will be perceived as substantially constraining individual prerogative,[6] while the other will be essentially irrelevant to almost everyone.

The point of the foregoing is to question whether we can say anything useful about the costs of compliance without knowing about the antecedent preferences a law constrains, and thus to question, from still another direction, Epstein's claim that simplicity or complexity, however defined, are useful analytical tools in defining a regime of legal minimalim. If Epstein's goal is to make the case for laws that intrude minimally on private ordering and individual choice, then generalizing about the tendencies of regulatory structures without attention to their content—the antecedent preferences they regulate—is very likely to be futile.

What Does Simplicity Have to Do with It?

Epstein devotes virtually no time to constitutionalism is this book. What is telling about this omission is that the direction of constitutional regulation, in theory, is just the opposite of the direction of the kind of regulation with which Epstein is largely concerned. Epstein is concerned with the extent to which the state regulates or

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controls its citizens. Yet many understandings of constitutionalism (see Pennock and Chapman 1979) are premised on the idea that constitutional rules and constitutional enforcement are vehicles for restraining government. At times, of course, constitutionalism does other things, some of which are desirable and some of which are not. But if constitutionalism is at its core state-controlling, and if constitutionalism is a form of legal regulation (which I believe it is), then someone with a desire to minimize regulation of the citizenry might choose constitutionalism as a vehicle for achieving that end. And if this is so, then all of the mechanisms that Epstein sees as vices in the regulation of individuals and businesses might be seen as virtues in the regulation of the state. Since Epstein wants the state to be more disabled than it now is, we would expect him to favor constitutional rules of great complexity, as he understands that term. If simplicity is the route to minimalism, and if complexity is the route to intrusiveness, then he ought to favor constitutions that are long, complicated, costly to comply with, and highly intrusive.

This aside about constitutionalism is a way of reinforcing my larger point about legal structure. If every time that Epstein used the term "more complex" he were to substitute "more intrusive," and if every time he used the word "simple" he were to substitute the words "passive," or "non-intrusive," or "minimal," I would have said none of what I have said in this essay. But of course my claim is not about terminology. Rather, it is about the question whether the formal properties of rules, of which simplicity and complexity are two, can be expected to have substantive effects in themselves, independent of who they are controlling, when they are controlling them, and what they are controlling. Epstein's title and occasional asides suggest that such questions form a large part of his project, but that turns out not to be the case. Simplicity turns out not to be very much a part of this project. That is a pity, not because Epstein's substantive project is not itself one worth writing a book about, but because the project directly addressing the causes and consequences of legal simplicity in all of its forms would be worth a book in its own right. For all of its other virtues, *Simple Rules for a Complex World* is not that book. *Simple Rules for a Complex World* is a passionate defense of legal minimalism, but unless legal simplicity is unhelpfully just equated with legal minimalism, this book is far, far less about legal simplicity than the reader is likely to expect. We are still in need of a book on legal simplicity, but it is at least possible,

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as I have tried to suggest here, that legal simplicity *per se* may turn out either to have no substantive effect on liberty, or to have the opposite of the effect Epstein suggests. In many environments, legal simplicity maybe the natural companion of legal maximalism, and legal complexity, with all of its qualifications, exceptions, and caveats, may, more than Epstein acknowledges, be the natural route to legal minimalism.

NOTES

1. The full example concerns a prohibition on "vehicles in the park." In one of the more famous of modern jurisprudential debates, H.L.A. Hart argued that this rule had a core of settled meaning, for example when applied to automobiles and trucks, and a penumbra of uncertainty, as would be the case for bicycles, roller skates, or baby carriages (Hart 1958). Lon Fuller's objection, not especially germane here, was that one could not determine even a core of settled meaning without knowing the purpose of a law, and in support of his claim asked us to consider whether the rule would prohibit a fully functioning military vehicle incorporated as part of a war memorial erected by a veteran's organization (Fuller 1958).
2. The parenthetical in the text is perhaps itself too simple. Scientists and economists often claim that a simple explanation is to be preferred, *ceteris paribus*, to a complex one, in part because a simple explanation typically explains more than a complex one, the complexity typically being limiting. This might suggest, although I cannot fully explore the issue here, that a simple explanation serves the goal of maximum breadth or scope of explanation. Insofar as a simple explanation is a good thing, therefore, it might be for reasons just the opposite of what Epstein believes are the reasons for a simple rule or law being a good thing.
3. Throughout the book Epstein seems surprisingly unconcerned with the sources of law, and rarely differentiates between judge-made common-law rules and rules made by legislatures or administrative agencies. Still, most of the book's examples of bad laws and bad rules come from legislatures and administrative agencies, suggesting that Epstein has a comparative fondness for judges over legislatures as a source of law. This would be consistent with a desire to limit the reach of the law, but it is hardly clear that judge-made law, whose rules typically require many lawyers and volumes of interpretation to understand, whose exceptions are not only numerous but often rarely announced until the moment of application, and whose content is typically buried in mountains of judicial verbiage, can be thought of as "simple" in any useful sense of that word.
4. I say "same amount" because few regulatory systems realistically aim at a rate of zero for the disfavored conduct. Sometimes this is because a zero

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rate of disfavored conduct would produce too low a rate of favored conduct. If we tried to reduce the rate of negligence in product development by pharmaceutical companies to zero, for example, we would have too low a rate of development of valuable pharmaceuticals, just as if we tried to reduce the rate of newspaper falsity to zero we would have too low a rate of newspaper truth, as the Supreme Court held in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). And at other times, as Epstein valuably reminds us repeatedly throughout the book, the costs of trying to cure the last 5 percent of non-compliance may be far in excess of the gains produced.

5. Note that the preferences to which I refer are entirely exogenous. Epstein engages those who claim that his notion of preferences fails to recognize the extent to which preferences themselves are often created or shaped by the regulatory apparatus (308–12), but my argument is solely about different sorts of exogenous preferences, rather than about endogenous preferences.
6. I use the word "prerogative" to make it clear that the moral legitimacy of what one wants to do is distinct from the question of whether one wants to do it, and to what degree of intensity. In other words, the empirical question of what people want to do is different from the moral question of whether they are right (and have a right) to want to do it.

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WHAT'S WRONG WITH LIBERTARIANISM

ABSTRACT: *Libertarian arguments about the empirical benefits of capitalism are, as yet, inadequate to convince anyone who lacks libertarian philosophical convictions. Yet "philosophical" libertarianism founders on internal contradictions that render it unfit to make libertarians out of anyone who does not have strong consequentialist reasons for libertarian belief. The joint failure of these two approaches to libertarianism explains why they are both present in orthodox libertarianism—they hide each other's weaknesses, thereby perpetuating them. Libertarianism retains significant potential for illuminating the modern world because of its distance from mainstream intellectual assumptions. But this potential will remain unfulfilled until its ideological superstructure is dismantled.*

In David Boaz's *The Libertarian Reader*—one of a spate of recent books about libertarianism—there is a long excerpt from Richard Cornuelle's 1991 article, "The Power and Poverty of Libertarian Thought." In this assessment of libertarianism in light of the collapse of communism,[1] Cornuelle noted that "the repudiation of communist economics is shifting the intellectual action from a battle in which the libertarians held the high ground"—the battle over the feasibility of socialism—

> to one where they hold no ground at all. From the beginning and almost to the end, communism drew its legitimacy from its ends

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> rather than its means, from the powerful echo of its original promises to protect ordinary people from the hazards of life in a capitalist society. Large numbers of working people and their intellectual surrogates still feel in their bones that an unfettered free market is a jungle, that workers do not get their fair share of what they produce, that capitalism so degrades and disorients working people that they cannot make mature decisions about their own welfare, that it pollutes the streams and waters the whiskey, that it creates an acrid social atmosphere in which the smell of money works its way indelibly into the fabric of everything, that it leaves undone or poorly done all the things a good society needs most, and finally that capitalism is given by its nature to large arrhythmic spasms, and the burden of this abiding economic insecurity falls primarily on working people. (Boaz 1997b, 364)

In the new, post-1989 intellectual landscape, Cornuelle noted, it is not socialism but the redistributive, regulatory state that commands allegiance. In the 1920s and 1930s, Ludwig von Mises developed a challenge to the economic feasibility of socialism that was finally, and suddenly, accepted as self-evident in 1989. With the collapse of communism, however, what is at issue between libertarians and everyone else is no longer the value of a market economy, but whether the market should be "closely watched and guided" by "democratic political institutions . . . and a welfare or service state with a broad charter to keep the society fair and fit for human habitation" (ibid., 365). Cornuelle pointed out that this was a debate libertarians would find much tougher going than the debate over socialism.

Seven years later, even Cornuelle's daunting assessment of the task for libertarians looks overoptimistic. The conclusion that resounds through Boaz's *Libertarianism: A Primer* (New York: Free Press, 1997), Charles Murray's *What It Means to Be a Libertarian* (New York: Broadway Books, 1997), John L. Kelley's *Bringing the Market Back In* (New York: New York University Press, 1997), and David Conway's *Classical Liberalism: The Unvanquished Ideal* (New York: St. Martin's Press, 1995), is that libertarians do not yet possess an adequate critique of government interference in the market economy—a critique, that is to say, that establishes not only why the state should be kept on a very short leash, but why it should be emasculated. Although not all of these books are scholarly, they accurately represent the deficiencies in the scholarship that attempts to make a presumptive case for the untrammeled market. It is not

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unfair, then, to judge the state of libertarian thought against the evidence of these four volumes.

My aim in this essay is to diagnose the failings of libertarianism and propose a remedy for them. The key to doing so is, I believe, to overcome the fundamental tension running through all libertarian thought: the tension between criticizing what Cornuelle calls the legitimacy of the ends of the modern state—the ends that formerly legitimated communism—and the efficacy of the means the state employs. Libertarianism tries to criticize both the efficacy of the means and the legitimacy of the ends. These two forms of critique, however, depend on antithetical forms of argument that not only subvert each other, but feed on each other's weaknesses.

I. CONSEQUENTIALIST LIBERTARIANISM

To put my thesis in more technical language, libertarian doctrine tries to unite consequentialist arguments about the harmful empirical *effects* of the modern state with nonconsequentialist arguments about the allegedly *intrinsic* evil of state regulation and redistribution. A purely consequentialist, "empirical" libertarianism could, on its own, largely accept as valid the meliorist aims listed by Cornuelle, challenging mainly whether the state is capable of achieving them without causing even worse problems. A purely nonconsequentialist, "philosophical" libertarianism,[2] in contrast, views the modern state as intrinsically unjust, regardless of whether or not it actually rectifies the "abuses" of capitalism. This form of libertarianism cannot accept the notion that any end justifies the coercive means used by the redistributive, regulatory state. Such ends are therefore seen as illegitimate political goals, although they may be laudable objects of private, nonpolitical action. Why empirical and philosophical forms of argument should conflict with each other, and why libertarians nonetheless try to yoke them together, will be my chief concern.

A good place to begin is the British philosopher David Conway's *Classical Liberalism*, a book that breaks with libertarian orthodoxy by attempting to come down squarely on the consequentialist side of the fence, and a book that, as a result, is the most convincing case for libertarianism in print.

Conway attempts to justify libertarianism (which he calls "classical liberalism") solely on the basis of its being "more conducive

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than any other form of societal order to the well-being or happiness of members of society" (9). In choosing happiness as the positive consequence against which social systems should be evaluated, Conway eschews any appeal to the inherent value of capitalist freedom or the intrinsic justice of private property. While Conway by no means claims that a libertarian society would produce universal bliss, he does maintain that libertarianism deserves our allegiance only inasmuch as it would enable its members to achieve "*greater well-being or happiness than does any other societal form*" (135, emphasis original). In effect adopting as his own Rawls's concern for the least advantaged members of society, for example, Conway contends that

> the life-prospects of society's less well-off members are not likely to improve if and when redistributive political institutions replace those which generate the inequalities which modern liberals find so unconscionable. Such egalitarian reforms are only likely to discourage the formation of capital and encourage its dissipation. Since it is upon the formation of capital that the continued and enhanced well-being of members ultimately depends, redistributive measures and institutions favored by modern liberals are unlikely to benefit those whom they are ostensibly designed to benefit. (133)

Conway's undiluted utilitarian rationale for libertarianism is unusual and refreshing. As we will see, consequentialist arguments usually serve a much more confused and illicit function in libertarian thought. For its attempt to clarify the contribution a libertarian society might make to human happiness, Conway's book would deserve commendation even if it had no other merits. But Conway also takes the trouble to defend his utilitarian libertarianism against liberal, feminist, communitarian, and conservative alternatives, and the resulting chapters, which take up most of *Classical Liberalism*, are well worth the attention of anyone interested in political philosophy—not just libertarians.

That said, it must also be admitted that Conway's argument for libertarianism fails. Conway does just about everything a philosopher could do for the utilitarian-libertarian cause, but it is in the nature of this cause that it must inevitably appeal to empirical claims, and the vindication of such claims requires more than philosophical expertise. The concern about capital formation just quoted is one example. It is true that if government redistribution of in-

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come brought *all* saving to a halt, it would be disastrous, as Conway claims. But he adduces no evidence that the particular amount of redistributive taxation necessary to bring about income equality, or greater income equality, in a particular society would bring about such severe consequences. Only extremely high ("confiscatory") levels of taxation would stop all saving. Short of that point—wherever it lies—Conway gives us no reason to believe that the addition to well-being that might be produced by shifting income from the most to the least advantaged would be outweighed by the depressing effect this might have on capital formation in a given time and place.

Classical Liberalism teems with problems of this kind. For instance, Conway shares the tendency—endemic among classical and interventionist liberals alike—to equate "economic growth and affluence" (53) with his *telos*, happiness. But this philistine equation rests on large claims about human psychology of which Conway takes no notice and which he certainly does not substantiate.[3] Again without any apparent empirical support, Conway endorses Henry Sidgwick's claim that "the general happiness is promoted by far the most effectively through 'maintaining in adults generally (except married women) the expectation that each will be thrown on his own resources for the supply of his own wants'" (48)—as if this is not only self-explanatory but uncontroversial. Throughout, Conway tends to treat claims about the likely results of various social arrangements as if they need only be stated, not demonstrated.

This is not to say that all of his claims about social arrangements are false. But such claims are inherently empirical, and thus cannot succeed as exercises in abstract reasoning of the sort in which academic philosophers engage. Arguments about the beneficial consequences of civil society and the harms caused by political intervention—arguments that might be both true and important—carry little weight when they are merely asserted a priori. For instance, Conway observes that "the existence of a state welfare apparatus designed to ensure [that] a decent living is had by those unable to provide one for themselves does not necessarily increase the likelihood that a decent life *will* be had by those unable to provide for themselves" (21, emphasis added). In other words, good intentions are one thing, good results another. But if this observation is to warrant our opposition to the welfare state, rather than simply making us cautious while we continue to cede to the welfare state

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the power to expand its well-intentioned interference in civil society, Conway would have to adduce evidence of widespread, cross-national "state failure" in programs of welfare provision, and this he does not do.

The flaw in Conway's book runs deeper, however, than a simple failure to report to a philosophical audience empirical evidence of state failure (or civil-society success). The real problem is that such evidence—even if Conway were familiar with it—taken in its entirety, appears to be insufficient to warrant the radical conclusions libertarians such as Conway want to draw. Even if *many* government interventions have failed to advance human happiness—as classical liberal economists have tried to show—this alone would not justify libertarianism. Libertarian conclusions require not only extensive evidence of government failure, but an empirically substantiated reason to think that such failure is *always* more likely than the failure of civil society.

If such a reason exists, Conway fails to provide it. In fact, he assumes that the burden of reasoning lies not with him, but with his opponents. In rebutting Ted Honderich's radical version of social democracy, for example, Conway asserts that Honderich "needs to provide . . . some reason for doubting that the institution of private property is essential to the happiness of everyone" (52), even though Conway has given us no (substantiated) reason to think that private property *is* essential to everyone's happiness. Those who favor departures from laissez faire—even when their aims are, like Honderich's, radical enough to qualify as "socialist"—do not, after all, make the unequivocal claim that government action will always tend to produce better results than private property. Thus, their evidentiary burden is lighter than those, like Conway, who implicitly make the opposite claim. In the post-communist era, the antagonist of classical liberalism is not likely to believe anything more sweeping than that state action may be needed whenever civil society fails. The questions the libertarian must answer, then, are how often civil society does fail, and how often the state is liable to do better. The interventionist can be an agnostic about such general questions, treating each potential civil-society failure (i.e., each "social problem") case by case. It is the libertarian who is committed to the grand claim that, for some reason, intervention must always be avoided. The "piecemeal social engineer" (as Popper called interventionists) can concede a presumption in favor of private property

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while reserving the right to whittle away at its "excesses" by means of state action; she faces no obligation to disprove the overall utility of property rights. The utilitarian libertarian, however, is obliged to show that the utility of property rights is so nearly universal that all government intervention with them is bound to fail, when judged against the standard of human happiness.

Charles Murray's *What It Means to Be a Libertarian: A Personal Interpretation*, although not intended to be scholarly, is much better on factual questions than Conway's *Classical Liberalism*. Despite philosophical problems that make Murray's book inferior to Conway's as a self-contained argument for utilitarian libertarianism, *What It Means to Be a Libertarian* is a potent stimulus for thinking about how such a worldview might (or might not) be justified. Unlike Conway, Murray recognizes that libertarianism cannot be defended on utilitarian grounds unless there are *empirically substantiated reasons* to think that, in general, laissez faire will produce better results than state intervention.

Murray's first empirical rationale for libertarianism is that state action tends to be ineffective because, at best, it displaces efforts that would have taken place in civil society, while often it cannot match the success of those efforts. Murray's chapter on government regulation of consumer goods, for example, disputes the idea that without state supervision of the market, people would be at the mercy of unscrupulous businesses. He points out that before the U.S. government began regulating hazardous products, "the level of such problems compared favorably with the record of any other country's," and "the trendlines were moving in the right direction, toward products and services that gave the consumer greater safety and reliability as well as more functionality" (61). Murray shows that these positive trends, which he attributes to the market's response to consumer demand for safety and reliability, have simply continued as before in the present era of active government regulation. Murray accepts that in some cases we need third parties to certify the safety of products or services, such as drugs and medical care. But he points out that, for just this reason, "there will be money to be made by setting up a nongovernmental counterpart to the FDA" (69)—that is, a certifier whose reputation, and thus its profits, rest on its independence and integrity.

This example suggests both the advantages and the drawbacks of

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Murray's main device for showing government inefficacy: the trend-line test.

Trend Lines and Historical Research

The trend-line test plots product safety, or poverty rates, or measures of educational achievement, or life expectancy, or industrial accidents, or wage rates, or any other desired or undesired outcome over time; it superimposes on this trend the expansion of government intervention designed to solve the problem in question; and then it bids us to observe whether or not intervention seems to have pushed the trend in a more positive direction. Murray asserts that in almost every case, the answer is negative. Thus, he points out that the New Deal by no stretch of the imagination ended or even improved the unemployment trend of the Great Depression, which wore on for nearly a decade after its implementation; that the War on Poverty apparently had no positive effect on the rate of poverty, which was already declining but which dropped more in the 1950s than in the 1960s; that, after the introduction of Medicare and Medicaid in 1965, Americans' life expectancy, which had been rising since 1900, began to rise more slowly; that federal spending on education has gone up as educational achievement has declined; and that U.S. government regulation of occupational health and safety seems to have had no impact on already-falling rates of injury and disease (51–62).

All of this is interesting but inadequate. Returning to the initial example, we can't really know why product safety was improving before federal regulation began, and we can't really tell why it continued to improve at the same rate, until we go well beyond the simple scrutiny of trend lines. To truly prove Murray's point we would need historical studies that explored the sources of the trends in detail; and these studies would have to be more subtle than the simple, two-variable model implicit in the trend-line test. Let us take these points in turn.

First, no accumulation of trend-line tests alone can reveal the *reasons* for government inefficacy. Murray claims that there are three reasons: (a) state action merely displaces the action of private individuals; (b) "so much in a modern society has the inertia of a ponderous freight train, running on rails that government cannot shift

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and moving with such momentum that an outside force such as government cannot speed it up or slow it down more than fractionally" (57); and (c)

> the old functions of government were straightforward . . . with by-the-book techniques that worked. A bureaucracy could do them. In contrast, healing an abused child is not a known task. Instilling racial understanding is not a known task. Teaching self-restraint to teenagers is not a known task. (145)

While plausible, reason (c) cannot (and is not intended to) justify anything approaching Murray's repudiation of almost all regulation and government service provision. It applies only to the type of problem with which social workers must deal, leaving most modern government functions untouched. Reason (b)—society as unstoppable freight train—is either no reason at all, in that it simply restates the alleged inefficacy of government action; or it is, in reality, an argument for a much bigger government, since it attributes government failure to a sheer lack of power.

That leaves reason (a), government displacement of civil society. This reason is assumed, not demonstrated, by Murray's interpretation of the trend lines; it amounts to little more than an ungrounded assertion—*something* more (a plausible hunch), but not much. In the late 1990s, all the trends may seem to tell against the efficacy of state action. But in the early 1930s they all seemed to tell against the efficacy of the market. Murray's hunch, like that of our socialist grandparents, may be nothing more than an artifact of the times: it could be that a predominantly libertarian society, like that of the early 1930s, will produce a characteristic set of problems that show up in negative trends, while a predominantly interventionist society, like ours, will produce a different set. Extrapolating from these trends, either to the conclusion that "capitalism can't do anything right" (as it appeared in, say, 1932) or that "government can't do anything right" (as it may appear today) is simply unwarranted. The truth could lie somewhere in the middle; that is what makes the social-democratic order so difficult for simplistic forms of libertarianism to challenge effectively.

The second problem with the trend-line test is that it may obscure more than it reveals. Consider that there is now a rapidly growing movement to use legislation to prop up the standards of

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medical ethics that are being undermined by managed care. In 20 years this movement will probably have produced a welter of state and federal regulations controlling every aspect of the doctor-patient relationship; but a retrospective trend-line test performed in 2018 would tell us almost nothing useful about how we got to that point. The trend-line historian of 2018 would, at best, be able to devise some measure of the decline in professional standards that prompted the first spate of controls in 1997; and she might notice further that this decline continued over the first two decades of the twenty-first century, despite the multiplication of government regulations designed to staunch it. These data might seem to justify her conclusion that if the regulations hadn't been imposed, civil society would have dealt with the problem as well, or as poorly, as the regulations did. But it is unlikely that this conclusion would be accurate. The erosion in medical standards is the result of the rise of managed care, which is itself a response to a problem with much earlier roots that produced a completely different trend. Managed care is designed to stop the spiralling cost of medical care by bureaucratically controlling the actions of doctors—undermining their professional ethos. Understanding the cause of the trend line at issue, then, would require us to grasp the source of rising medical costs; and here, the culprit may well be something that happened as long ago as World War II: the creation of a tax deduction for employer-paid health insurance. Once insurance costs were assumed by employers rather than by the actual recipients of health care, consumers lost most of the financial incentive to conserve on their use of benefits. Managed care was the eventual result. If this analysis is correct, managed care, hence the erosion of professional standards, is civil society's response to a problem unintentionally caused by government policy half a century ago, and civil society may be powerless to correct the defects of its own response unless that policy is repealed. Until then, government regulation may be the only thing that can keep a deteriorating situation from worsening even faster. None of this could be determined simply by comparing two end results of a complex historical process: the decline in medical standards and the resulting implementation of new regulations.

Or consider one of Murray's own examples, the trend of unemployment during the Great Depression. It is not enough to know that massive government efforts did little to improve the trend line; we also need to know whether the civil-society alternatives would

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have done any better. Perhaps government intervention kept unemployment from getting worse than it did. To rule out this possibility, we would need both a theory explaining how civil society can, on its own, generate high levels of employment; and—something free-market economists often forget—empirical confirmation that the theory's assumptions are applicable to the case at hand. We would need, in short, an empirically grounded explanation of the cause of the Great Depression that vindicates the free market (e.g., Friedman and Schwartz 1963; Smiley 1991). Without it, the trend-line test would tell us nothing of value.

Finally, consider Murray's use of the trend-line test in *Losing Ground*. There he concludes, from the observation that the decline in poverty flattened out after the start of the War on Poverty (Murray 1984, 57), that the War itself must have caused this adverse trend. But what if the cause of the trend lay in another variable—for example, the coincidence of African-American migration from the Jim Crow South to the industrial North at the same time racist unions, minimum wages, occupational-licensing laws, and other labor-market restrictions were blocking traditional paths into the urban labor market (cf. Williams 1982)? The main effect of the War on Poverty might then have been not to cause poverty but to ameliorate it, keeping people alive once first-rung, low-paying jobs started disappearing.

Perhaps my criticisms of the trend-line test seem excessive. Murray is not, after all, claiming that this test is the end-all; he nowhere tries to discourage more searching examinations of governmental efficacy. Yet Murray is convinced that, with the assistance of the trend-line test, he can make an empirical case for libertarianism in 178 very small pages of very large type—with, he brags (xii), no footnotes, no tables, and only one graph. This conviction militates against detailed historical argumentation, and in favor of a simplistic substitute for it such as the trend-line test.

Murray's dedication to simplicity would nonetheless be excusable, even admirable, if he were popularizing a vast body of empirical research that made his case more systematically. But he is not. *What It Means to Be a Libertarian* does not draw on the extensive work of, say, the Chicago school in documenting the many failures and perversities of government regulations. This may be because Murray recognizes that even a great deal of research showing the inefficacy of this or that government program is not the same thing

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as a credible, rigorous argument for why inefficacy would be endemic to political but not other institutions. Instead of citing this research, then, Murray proposes the trend-line test as an attempt to bridge the gap between evidence of state failure and a general presumption against state efficacy. But this device cannot accomplish such a large goal.

Libertarian Communitarianism

The flimsiness of the trend-line argument may not be all that surprising in light of Murray's second utilitarian argument for libertarianism: the claim that the displacement of civil society by state action is not only ineffective, but is positively harmful, because the individual and communal exercises of responsibility thus crowded out are the source of essential psychological satisfaction. If running our own lives is inherently satisfying, as this argument assumes, then the question of whether civil society is more effective than government is almost beside the point. Although, as a utilitarian, Murray cannot and does not hold civil society to be *intrinsically* valuable, he does consider it to be *inherently* conducive to happiness. Now if civil society automatically produces happiness by giving people the responsibility of taking care of themselves, why should a utilitarian worry very much about whether civil society is more efficacious than the state? Murray can afford to be cavalier about whether the trend-line test provides sufficient grounds for thinking civil society more effective than government because his second argument makes the issue of efficacy a mere afterthought.

Once we accept Murray's second argument, a case for libertarianism could, in fact, be made in far fewer than 178 small pages—and it is, in two paragraphs that are reproduced here in their entirety:

> Think about your own life and whatever its most enduring *satisfactions* have been—not its amusements or pleasures, nor even its commitments, but its satisfactions. They are probably made up of a mixture of pleasure and contentment, but they are something more as well. They are the parts of your life in which you take pride, that make you think you haven't done so badly after all, that define your own sense of what is best in you.

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> Odds are that these satisfactions involve accomplishments for which you bore responsibility. What filled an event with satisfaction is that *you* did it—not alone, necessarily, but with a substantial amount of responsibility resting on *your* shoulders, with a substantial amount of the good thing being *your* contribution, whether in a moment (sinking the winning basket) or over many years (making a good living). You may be happy that your team won the game if you are a spectator; you may have a good living from a trust fund. But the word *satisfaction* does not apply. (31–32)

There is some wisdom here—but not enough to get us to libertarianism.

For one thing, why should satisfaction be the form of happiness that we want institutions to encourage, *rather than* pleasure or contentment? This stacks the deck in favor of Murray's desired conclusion—that responsibility is the key to happiness. It is hard to be satisfied about things for which one isn't responsible. But one may be content about such things, or joyous; why should these feelings be scanted?

My purpose is not to dispute in seven lines what Murray asserts in 16. It is, instead, to note the bourgeois complacency of Murray's two-paragraph take on the meaning of life. I am not suggesting that what Murray says should be disregarded because whatever is bourgeois, or brief, is vulgar. I am not suggesting that what Murray says should be disregarded at all. He, and the bourgeoisie, may well be right in extolling a job well done and "making a good living." But to find out if they—that is to say, we—are right, we need to do a bit more than the introspecting that is all Murray seems to have done. What we find when we look inward may, after all, be nothing but the contingent product of a particular constellation of historical circumstances—those that have produced what we know as bourgeois society, and thus our own bourgeois sensibilities. If we are going to base our political agenda on institutions' conduciveness to happiness, we had better ask whether our understanding of happiness—no matter how profound it may seem to us—might be less than a universally valid perception of the human condition. Do people in other cultures find "satisfaction" to be so clearly preferable to other forms of happiness? Is there any reason to think that the type of satisfaction Murray invokes would have had survival value to the hunter-gatherers whose genes, and thus whose emo-

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tional dispositions, we inherited? Could his version of happiness be gender-specific? I do not prejudge the answers to such questions. I do believe, however, that a serious treatment of human happiness would need to ask them.

Murray goes directly from his privileging of satisfaction to the conclusion that it is best attained under a libertarian regime. "Responsibility," he writes, is "freedom's obverse"; and responsibility "is the indispensable quality that allows us to carry through on our choices and take satisfaction from our accomplishments, whether they be making a living, realizing our gifts, caring for a family, or being a good neighbor." Since "limited government leaves people with the freedom and responsibility they need to mold satisfying lives both as individuals and members of families and communities," Murray is able to conclude that "limited government enables people to pursue happiness" (35). At this early juncture, Murray has completed a case for libertarianism that is, if accurate, dispositive. The remaining four-fifths of the book, which spells out Murray's vision of limited government and defends it by means of the trend-line test, is—at best—secondary. If satisfaction is the end and libertarianism is *automatically* the means to it, because it leaves us responsible for our lives, then it hardly matters whether libertarianism also would be more effective in solving social problems than social democracy. Murray's second argument obviates his first one, and this may account for the careless treatment of efficacy issues that is inherent in the trend-line test.

This carelessness will vitiate Murray's argument for libertarianism in the eyes any serious utilitarian. For the social problems that are treated cavalierly by the trend-line test may themselves impinge on happiness if happiness is not arbitrarily confined to "satisfaction." Thus, the possible inability of civil society to solve social problems might counteract the satisfaction people get (*ex hypothesi*) from being left to solve these problems on their own. This is, presumably, why Murray himself started off, in *Losing Ground*, with the question of the state's problem-solving efficacy—did welfare programs, he asked, "add to the net happiness in the world?" (Murray 1984, 203)—and why, in *What It Means to Be a Libertarian*, he cannot resist the temptation to continue trying to answer this question. If the inefficacy of civil society is causing people to starve to death, are we really to believe that the satisfaction they get from fending for themselves makes it all worthwhile? Perhaps so, but one would like

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to have more evidence for this conclusion than Murray's ruminations about the rewards of sinking the winning basket. If we *are* interested in efficacy, as Murray seems to be most of the time, then the putative satisfaction allegedly inherent in civil-society problem-solving efforts should be, at most, one factor in our estimate of whether libertarianism can be expected to produce the greatest happiness.

Even then, we need to ask some hard questions about Murray's move from extolling responsibility to his assumptions that government is its enemy, and that "community" is the fount of human satisfaction.

First, it is facile to assume, as Murray does, that even if personal responsibility is essential to happiness, market and nonprofit activity are its essential manifestations. The ability to "make a good living" depends overwhelmingly on good luck—on dispositions, habits, and skills that an individual cannot acquire on her own, but is sometimes fortunate enough to acquire from others. Is it to the upper middle-class child's credit that he enters an Ivy League university savvy in the ways of modern institutions, relatively well-educated, and organized enough to accomplish tasks and make short-term sacrifices? Is it the ghetto child's fault that she emerges unskilled and illiterate from public school, bereft of self-discipline from a disintegrated family, or listless and afraid from 18 years in a housing project? Do people never lose their jobs because of a recession or a shift in market conditions for which they are not the cause; and do they never gain them because the talents and experiences they happen to have—or that they were able to acquire because of dispositions they were lucky enough to inherit or learn from others—position them well to take advantage of whatever the market now happens to value? F. A. Hayek (1976, 74) wisely realized that market outcomes cannot legitimately—or successfully—be defended on the basis of desert. Murray, by contrast, advocates, in effect, a return to Victorian psychology. His libertarianism is just as vulnerable as Victorianism was to the discovery that people are not, in fact, solely or even largely responsible for their good or ill fortune.

Even if happiness is reducible to "satisfaction," and even if self-responsibility is inherent in markets, is it also inherent in local community? Murray thinks so, and he departs from hard-core libertarianism by blessing zoning laws and other exercises of local power, as

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well as the municipal provision of public services (42–43), so strongly does he believe in the devolution of government responsibility not to the individual (as a strict libertarian would), but to "the most local *feasible* level" (42, emphasis added). This raises anew, however, the tension between Murray's two rationales for libertarianism. Murray justifies devolution as essential to achieving satisfaction-cum-responsibility, but in the same breath he implicitly eschews localism, hence responsibility, hence satisfaction, when they are unfeasible. This, in turn, leads him into a series of dubious assumptions designed to prove that a great deal of local responsibility is, in fact, feasible.

For instance, Murray blames the relative absence of neighborhood service provision in contemporary America on the growth of more distant and bureaucratic levels of government. This allows him to assume that neighborhood service provision would be feasible if centralized government services were rolled back. But Murray fails to ask whether it is not big government but affluence, and thus capitalism, that is making "community" superfluous by allowing people to buy services they would otherwise have to provide for themselves cooperatively or through local government. And he fails to ask whether it might be urbanization, or suburbanization, that makes neighbors strangers to each other. These possibilities could render neighborhood "community" unfeasible in any modern society, no matter how libertarian. Murray insists that in extolling neighborhood service provision as a realistic alternative, he is not "referring just to small-town America," but to "working-class and middle-class neighborhoods in Brooklyn and San Diego" (166). Having lived in working-class and middle-class neighborhoods in Brooklyn, Berkeley, and New Haven, this reader is skeptical. But Murray might convince skeptics if he provided us something more than assertions. In the urban neighborhoods I have known, people have little contact with each other because they are transient, because they are busy, and because they have little in common besides their addresses. Perhaps if we had to provide our own police patrols and fire protection, we would get to know each other better, but I suspect that most of us would end up paying somebody else to do these things for us—just as we do now, through our (landlords') property taxes—because we don't particularly *want* to meet our neighbors, and because we don't have time to. These observations

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are not intended to be decisive. They may establish, however, that Murray has not discharged his burden of proof.

Murray contends that it is only among "the elites" that "geographic neighborhood is no longer a critical part of American life." The elites' "little platoons" are, he observes, "drawn from professional circles, people with shared intellectual interests, old school ties, and clubs, and are scattered around the city, the country, and increasingly, the world." Fortunately, he claims,

> the elites are a small minority. For much of working-class and middle-class America the geographic neighborhood continues to be important. Friends are likely to live down the street. Engagements in social life are likely to be grounded in the neighborhood churches, lodges, service organizations, charities, and schools. (166)

Even if this is true, though, the ranks of the "elites" seem to be growing, as reflected by such indices as the infamous decline of bowling leagues (Putnam 1995). By Murray's own account, then, it would appear that rising levels of education and the growth of professional work are as dangerous to "community" as big government is, and that cutting back government services will not bring forth a resurgence of community unless the growth of the "elite" is somehow stopped.

A different possibility is that it is simply bad neighborhood design that atomizes neighbors, isolating them behind large front lots and streets bereft of inviting sidewalks. Since federal highway and mortgage subsidies and local zoning regulations have been credibly blamed for this problem (e.g., Plater-Zyberk 1992, 22–23), it might seem to be a fat target for libertarians. But the remedy would have to be both more and less libertarian than the one Murray favors. The restoration of neighborliness would seem to impinge on the local zoning powers that he wants to preserve, even while the repeal of those powers, and of federal subsidies for suburbanization, would leave the social-service state intact. The success of new towns such as Celebration, Fla., where neighborliness is successfully encouraged by "New Urbanist" design, in no way relies on a diminution of the powers of state and federal government, even if the creation of Celebration by the Walt Disney Corporation does suggest—in direct contrast to Murray's vision—the need to diminish the powers of local government. In fact, the one area of Cele-

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bration town life that seems to be anything short of idyllic is the single area that is controlled not by Disney but by local governance: the school. Education politics in Celebration has been the source of vicious factionalism and personal enmity (Pollan 1997). This suggests that politics, even local politics, can easily be a source of misery, not satisfaction.

One might think that a utilitarian libertarian would be interested in such possibilities, but Murray, attempting to fuse Jeffersonian republicanism with his utilitarianism, is committed to seeing politics as an important source of happiness as long as it is local. This puts him on the side of the moralizing reporter for the *New York Times Magazine*, whose major article on Celebration, ignoring the very evidence it has presented about what politics is really like, bemoans the city's relative depoliticization and endorses the notion that "people taking responsibility for their own lives and the place where they live" is a "deeply *satisfying* process" (Pollan 1997, 81, emphasis added). This will be news to anyone who has attended a faculty meeting, participated in a political party, or observed a public debate.

The point, however, is not to settle here whether politics and happiness go together—any more than it was to establish that government, not civil society, caused the erosion of medical professionalism, the Great Depression, or the underclass. It is instead to analyze why Murray fails to make a prima facie case for his conclusions. I have deliberately restated standard free-market accounts of health insurance, the Depression, and poverty in order to suggest that the inadequacies of Murray's arguments are not, as is often the case, caused by dogmatism. The trend-line test leads Murray *away* from uncompromising libertarianism toward a view that is more flexible, but less credible. And so, too, does Murray's localism.

Albert Hirschman (1970) famously distinguished between two ways of dealing with interpersonal conflict in an institutional setting: "exit," or secession from the institution, and "voice": that is, remaining in the institution and engaging in discussion—politicking—with those with whom one disagrees. Murray puts a priority on exit, but not because he recognizes that being forced to remain in an organization where one is deeply at odds with one's peers is to be consigned to a living hell. If he did recognize this, it might spur him to conclude that there is immense value in being able, as an individual, to secede from as many political groupings as feasible

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(where "feasibility" is defined in terms of human happiness). The ability to secede even from local neighborhoods would not only free the individual from the unpleasantness of politics in both its petty (personal) and grand (ideological) forms. It would also enable her to join with others with whom she is *not* at odds in common enterprises designed to do what needed to be done.

Common enterprises can be a great source not only of satisfaction, but of friendship and delight, as long as the criterion for continued membership in them is agreement on a common goal and on the way to achieve it. This makes it unlikely[4] that their boundaries will coincide with the geographical borders of a neighborhood: a neighborhood is a chance agglomeration of people unlikely to share ideas about means, even if their proximity to each other sometimes imposes shared ends. If this holds true, then Murray's localist deviation from strict libertarianism is worse, from a utilitarian point of view, than complete laissez faire would be. He points out that "it is much easier for the average person to move out of Detroit than it is for him to move out of Michigan, and infinitely easier than to move out of the United States." Yes, but one can only move *into* another "voice" community. And even if, as Murray recommends, it is made "easy for outlying neighborhoods in a city to secede and incorporate as independent municipalities" (43), this gives neighborhoods the "exit" option but leaves individuals trapped within neighborhood boundaries.

Why, then, is Murray concerned with allowing neighborhoods to exit? Because this safeguards against the danger that "local governments can be as tyrannical and corrupt as any other level of government" (42). In short, Murray misses the chance to launch a more penetrating critique of government because in the end, for all his talk of happiness, he accepts the notion that the ultimate evil is not unhappiness but *coercion*. The equation of satisfaction with self-governance makes *liberty*, in Murray's view, the functional equivalent of happiness; and liberty is, within the parameters of "feasibility" (criterion undefined), roughly equivalent to neighborhood autonomy, because "the smaller the unit of government, the more closely it approximates a group of people acting consensually" (ibid.). Murray may be willing to compromise the ideal of individual freedom as the ultimate value, but he is not willing to abandon it. The reasonable veneer cannot obscure the orthodox libertarian edifice.

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There may be a deeper connection than is first apparent, then, between Murray's heterodox, utilitarian libertarianism and the libertarian orthodoxy, which attempts to weld together utilitarian and "philosophical" considerations. To get a handle on the nature of this connection, let us turn to David Boaz's recent book, written from the perspective of a much more orthodox libertarianism than either Conway's or Murray's.

II. PHILOSOPHICAL LIBERTARIANISM

Officially, at least, Boaz, a long-time executive at the libertarian Cato Institute, has little use for assessments of the consequences of libertarianism. He repeats the standard worries about utilitarianism:

> How do we know what is good for millions of people? And what if the overwhelming majority in some society want something truly reprehensible—to expropriate the Russian kulaks, genitally mutilate teenage girls, or murder the Jews? Surely a utilitarian faced with the claim that the greatest number thought that such a policy would do the greatest good would fall back on some other principle—probably an innate sense that certain fundamental rights are self-evident. (83)[5]

Boaz believes, then, that governments should enforce self-evident fundamental rights rather than pursuing the greatest happiness for the greatest number. Indeed, rights are important because they "protect us from others who might use force against us" (3)—including those who would use force to achieve the greatest happiness for the greatest number. "The libertarian goal is a society free of coercion" (217). The chief defect of the state is not that it stands in the way of happiness, but that it stands in the way of liberty.

That, of course, is why Boaz's doctrine is called libertarianism. But libertarianism would simply be liberalism if not for its equation of "liberty" with private property. How does Boaz justify this equation?

He begins with an argument drawn from Murray Rothbard (1976, 29): that individuals must be owned, such that the only question is whether (a) individuals own each other, or (b) everyone collectively owns everyone, or (c) each individual owns herself. Contending that (b), collectivism, would, in practice, degenerate into (a), other-ownership; and rejecting (a) as inegalitarian; Boaz con-

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cludes that (c), self-ownership, is morally required. Boaz should stop right here, since he is, in effect, trumping liberty with equality. Amartya Sen (1992) has pointed out that all contemporary moral theories, including libertarianism, are essentially egalitarian; we can press on from this observation to ask why, if (as Boaz maintains) the liberty of a human being to own another should be trumped by equal human rights (62), the liberty to own large amounts of property should not also be trumped by equal human rights. This alone would seem definitively to lay to rest the philosophical case for libertarianism.

Before proceeding I should also note, if only briefly, that Rothbard's version of the self-ownership argument, and thus Boaz's, presupposes that someone—whether the individual herself or someone else—has the authority to have the individual do whatever this someone desires, whether what is desired is good or bad. This is what ownership means: the ability to dispose of the owned "property" (in this case, the individual) as one wishes. Rothbard and Boaz thus disregard the possibility that people's lives should not be subject to the arbitrary power of either their own *or* some other owner's will: that people's actions should, in principle, be controlled not by any arbitrary will, including their own, but by whatever it is good to do in each particular instance. The very idea of ownership contains the relativistic seeds of arbitrary authority: the arbitrary authority of the individual's "right to do wrong." To pursue this thought, however, would take us too far afield—to a critique of the intrinsic value of this right, and thus a critique of liberalism per se, rather than merely a critique of the libertarian version of liberalism.

To self-ownership, Boaz adds Locke's theory of property acquisition to derive what G. A. Cohen (1986) calls "world-ownership," the ownership of property. Boaz does not attempt to defend the Lockean notions that one can "mix" one's labor with inanimate objects, and that this mixing results not in the loss of one's labor but rather in the gain of a piece of the world.[6] He does not, in fact, defend Locke's theory at all. He simply states it in summary form (67) and then concludes that since Lockean property is equivalent to liberty, and since liberty is the greatest good and coercion the worst evil, anything that interferes with private property is coercive and therefore impermissible. The upshot is that "*no one has the right to initiate aggression against the person or property of anyone else*" (74, emphasis original)—including the government. Any regulation or re-

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distribution of property is, accordingly, illegitimate. "Since taxation is *coercive*, the ultimate libertarian goal is to eliminate it" (217, emphasis added). The problem with the modern state, then, is that it is unjust, whatever its consequences, because it inherently deprives people of freedom. But does it?

It does not; for all legal systems, including libertarianism, coercively enforce rules that assign the "ownership" of all persons and all bits of the world. Every legal system throws a net of coercion over the entire society it covers, prohibiting by force any deviations from its definitions of rights. Inasmuch as there is just as much of the world to be parcelled out under each system's set of property rules, and the rights governing all of this property are just as coercively enforced in all systems, there is no difference in the "amount" of coercion—or, conversely, the amount of (negative) freedom—under different legal systems, including libertarianism. If someone violates the laws of a social democracy—say, by hiding income from the government to avoid taxation—it is true that the state may subject her to coercive penalties. But if, in a libertarian society, someone violates the laws of property—say, by redistributing wealth from a rich person to a poor one without the consent of the former—it is equally true that the state may subject the malefactor to coercive penalties. So, strictly in terms of negative liberty—freedom from physical coercion—libertarianism has no edge over any other system (cf. Samuels 1993; Cohen 1995; Weinberg 1997).

This argument, it is true, clashes with the tacit libertarian presupposition that there is a baseline entitlement to whatever one "earns," such that government "redistribution" of wealth is coercive. The Lockean theory of property acquisition enshrines this baseline as "natural." But the legitimacy of the baseline is what is at issue, so it will not do to rest a defense of libertarianism on it: this would amount to resting libertarianism on itself. If we do not privilege the libertarian baseline as a state of "freedom," then it should be evident that a libertarian legal system uses this baseline to establish a distribution of property titles that is enforced just as coercively as any other legal system would enforce *its* distribution of entitlements. Thus, in a libertarian society, I am no less "prevented from doing what I could otherwise do"—Isaiah Berlin's definition of negative liberty (Berlin 1969, 122)—than in a social-democratic society. Under social democracy, things that I could otherwise do

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(in a libertarian society) with private property are prohibited by laws that assign much of that property to the state. If I treat state property as a private possession, transgressing the social-democratic baseline, I am considered a criminal. By the same token, however, under libertarianism, things that I could otherwise do (in a social-democratic society) with state property are prohibited by a legal system that assigns all property to individuals. If I treat the private property to which someone else had legal title as if it is state property—say, by giving "someone else's" money to a bag lady without the permission of its "rightful owner," or by entering the art gallery "owned" by a wealthy collector and treating it like a public museum without his consent—I am considered a criminal. By using the force of law to prohibit me from enjoying a state museum (of which there could, legally, be none), or from working in a state factory, or from receiving state welfare benefits or a public education, a libertarian government violates my negative liberty by prohibiting me from doing what I could under social democracy. (Whether these prohibited state activities might, in practice, be less enjoyable, remunerative, or educational than their libertarian alternatives is beside the point, since philosophical libertarianism must not appeal to beneficial consequences.)

Thus, Boaz is mistaken in describing taxation as "aggression against the person or property of" the taxpayer (74). If we start from a social-democratic baseline, it is *libertarianism* that sanctions coercive aggression: coercive aggression against the persons or property of those who are deprived, say, of their welfare entitlements by the refusal of a libertarian government to enforce them. The peaceful taxpayer in a social democracy, minding his own business, is revealed to be no more entitled to keep "his" property on the basis of a right to be free of aggression than is the peaceful recipient of "stolen" goods in a libertarian society, who could have no legitimate objection to the libertarian government's "redistribution" of her property to the person who is, according to the libertarian baseline, its rightful owner. For according to the social-democratic baseline, the welfare recipient is the rightful owner of the wealth in question, and the recalcitrant taxpayer is just as much a usurper of this right as the thief. The fact is that both social democracy and libertarianism violate negative liberty equally: for every taxpayer whose negative liberty would be violated by a social democracy, there is (figurative speaking) a would-be welfare recipi-

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ent whose negative liberty is violated by a libertarian government—as surely as is that of a homeowner, under either government, by a burglar.

There is, to be sure, a real difference in the amount of freedom libertarianism makes available to people relative to other systems. This difference, however, lies not in the ability of one social system to avoid coercively preventing me from doing what I would be able to do in another system, but in the putatively lesser *extent* of what "I could otherwise do." Compare libertarianism to Communism of the type that collapsed in 1989—state socialism—for a moment. In a Communist society I can, unless I am a high government official, devote fewer discrete chunks of the world to my purposes than I could in a libertarian society, since under Communism, the amount of the world that any private person owns is relatively small compared to the amount one is permitted to own under libertarianism. This means, however, not that Communist laws violate my negative liberty more than libertarian laws do, but that I have more *positive* liberty under a libertarian than a Communist regime: more liberty, that is, to "attain a goal" of my own choosing (Berlin 1969, 122)—as long as the goal is one better attained with private than with public property. I have no more negative liberty under libertarianism, since it is as true of Communism as of libertarianism that, so long as I obey the coercively enforced allocation of property titles, "no man or body of men interferes with my activity" (ibid.). Under Communism, there is no more "deliberate interference of other human beings within the area in which I could otherwise act" (ibid.)[7] than under libertarianism. What varies between the two societies is the scope of this area, the size of the private sphere (which Berlin unaccountably equates with *negative* liberty)—not whether its borders are coercively enforced.

Once we recognize that libertarians can legitimately claim an advantage over Communism only on the basis of positive freedom, however, it becomes unclear why one should prefer (philosophical) libertarianism to social democracy. For the social democrat wants to ensure that the opportunity for goal attainment that libertarians extend from high Communist officials to property owners does not stop there, leaving out the propertyless. In other words, the social democrat wants to equalize positive freedom, but more rigorously than does the libertarian. The libertarian's libertarianism turns out to be less complete than that of the social democrat, since the liber-

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tarian would arbitrarily extend positive liberty only to those who happen to have acquired title to pieces of the world. The social democrat asks why only property owners, rather than all human beings, should be able to attain their goals. Or, more accurately, the social democrat asks why only those who have "mixed" their labor with the world, or those who have received bequests or exchanges from others who have mixed their labor with the world, should be entitled to pieces of the world with which they may attain their goals.

Libertarians might respond by arguing that libertarianism is, *in practice*, able to achieve a wider distribution of property, hence of positive freedom, than social democracy. Such a response would remain "philosophical" in that it would take the freedom conferred by private property to be intrinsically valuable, regardless of its effects. People might use their positive freedom in ways that made them unhappy, for example; yet the assumption would still be that it is desirable for them to have more positive freedom than less, regardless of the resulting unhappiness. Despite this apriorism—and despite the type of apriorism that is neither avoidable nor undesirable in consequentialist inquiries, which must, of course, take as given the desirability of a goal against which some consequences are judged good and others bad—the *positive libertarianism* toward which this response points would also be resolutely empirical, in that its political recommendations would be based entirely on the claim that in the real world, the workings of an unregulated private sector would have the effect of distributing more opportunities for goal attainment, more equally, than any more regulated system. This claim cannot go through without knowledge of how the real world does, in fact, work.

To my knowledge, all libertarian philosophers (except Conway), from Hayek to Nozick to James Buchanan to lesser-known writers such as Antony Flew and Tibor Machan, reject the positive-libertarian alternative, preferring to rely on the claim that only negative liberty is "real" liberty. It may be surprising that, 700 years after the collapse of Scholasticism, there should still be philosophers who assume that there are "correct" and "incorrect" definitions of words. But it would be a mistake to underestimate how important to libertarian philosophy is the conviction that only negative liberty captures the "essence" of the word *liberty*.

Even if negative liberty is "true" liberty (and even if liberty is in-

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trinsically valuable), however, this cannot constitute an argument for libertarianism without the further assumption that negative liberty is either *uniquely* or *relatively* embodied in libertarianism. The assumption that liberty is embodied in libertarianism *relatively* more than in other systems is necessarily false, however—unless we are speaking of positive liberty—since, as we have seen, there is no difference in the amount of negative liberty afforded people by libertarianism and by competing systems of property law. And for the same reason, the assumption that freedom is *uniquely* embodied in libertarianism, such that libertarianism is the only system that would not infringe upon negative liberty, is equally false—unless we conflate negative liberty with Lockean property holdings, "moralizing" our definition of liberty (as Cohen puts it) by importing into it a theory of rights, such that, by definition, any deviation from those rights counts as coercion, while deviations from, say, social-democratic welfare rights do not. This moralization of "negative liberty" is perfectly acceptable as a stipulation of the definition of the term—one stipulative definition is as good as another—but it deprives of any normative force the claim that libertarianism uniquely preserves negative liberty, since "negative liberty" has now been defined to mean nothing more than Lockean property rights, so that the claim must now read, "Libertarianism uniquely preserves Lockean property rights"—a tautology.

As we have seen, Boaz officially sets out no defense of the value of Lockean property rights *apart from* the fact that, supposedly, they embody "liberty," such that violations of these rights amount to "aggression" against the right-holder. Recall how quickly Boaz passes from describing Lockean property acquisition to equating it with freedom. The libertarian appeal to negative liberty is entirely parasitic on the appeal to Lockean property rights, but the appeal to Lockean property rights is entirely undefended. This raises the question of what makes libertarians so confident that they can stake their case on philosophical grounds.

The answer is, I think, to be found less in the poorly argued philosophy of libertarianism itself than in the prephilosophical conviction that capitalism equals freedom. This conviction has its foundations in the understanding of freedom that seems "obvious" to people who live in capitalist societies, even though this foundation crumbles under close scrutiny. As Alan Haworth puts it, libertarians "think they are for freedom but they don't know what freedom is. In reality, their

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doctrine is so contrary to freedom that it ought to be entitled 'anti-libertarianism'" (Haworth 1994, 5). This may strike the libertarian reader as bizarre, but it only seems so because it goes against conventional wisdom. In the West—and particularly in the United States, the only country where libertarianism (as opposed to more consequentialist forms of classical liberalism) has made any headway—market relations and, perhaps more importantly, the Protestant Ethic and its Lockean and implications are so pervasive that it is difficult to extricate them from our thinking. But that is exactly what we must do if we are to think about libertarianism seriously.

When libertarian philosophers cling ferociously to the view that the very idea of positive liberty is an abominable corruption of language, their "certitude is the classic symptom of ossified dogmatism" (Haworth 1994, 40). But when they further equate negative liberty with libertarianism, their certitude is, I think, less a sign of dogmatism than of the very problem that plagued Conway's and Murray's consequentialist arguments: complacency. Dogmatism is desperate; complacency is careless. The libertarians' angry denunciations of those who would question the "correct" definition of freedom (e.g., Flew 1992; Narveson 1992; see also Haworth 1994, 39–40) are last-ditch defenses against an idea that they realize threatens to bring down their entire system. But since that system is equally grounded on a commonsensical equation of negative liberty with private property that simply begs the question against nonlibertarians, their unargued acceptance of this equation suggests that they are oblivious to the possibility that their worldview rests on unexamined presuppositions absorbed unconsciously from the culture of capitalism. That just isn't something libertarians think about.

The fact that the problems of consequentialist libertarianism are traceable to a similar complacency may suggest that nothing more is at work here than an all-too-human failing. I believe, though, that the problem lies not in libertarians, but in libertarianism. The way libertarianism incorporates consequentialist *and* philosophical arguments feeds on and breeds complacency at the same time.

III. THE LIBERTARIAN DILEMMA

Consider the many pages Boaz devotes to the negative consequences of state action, often to great effect. One of the most im-

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pressive sections of the *Primer*, for example, discusses public education. Boaz points out that in the decade before 1833, when the English government began subsidizing schools, literacy among working-class youths had reached about 66 percent and school attendance had doubled; and that literacy was nearly universal in England before school was made free and compulsory in 1870 (261). Similarly, Boaz reports that in 1957, prior to the advent of Medicare, only 5 percent of elderly Americans reported being unable to afford needed treatment (ibid.). It is all too easy to assume that massive government programs must have been responses to massive failures of civil society; Boaz provides convincing antidotes to that assumption.

But how does this square with Boaz's overarching commitment to philosophical libertarianism? It doesn't. If private property is liberty, and liberty is intrinsically valuable, then taxation of private property is both coercive and intolerable; so why should we care if "taxes and regulations reduce people's incentive to produce wealth," or if "government enterprises are less efficient, less innovative, and more wasteful than private firms" (13)? Conversely, if private property is not so much intrinsically as instrumentally valuable—if it is the undesirable consequences of big government that are at issue ("the bigger the government," Boaz claims, "the bigger the failure" [12])—then of what relevance is it, for instance, that "socialism and other attempts to replace individual decision making with government solutions took away the freedom and dignity of the individual" (12)? On the one hand, Boaz is dedicated to the a priori proposition that "individuals have the right to do whatever they want to do, so long as they respect the equal [property] rights of others" (57). On the other hand, he believes that "libertarian social analysis" (16) demonstrates a posteriori that the consequences of inviolate property rights are prosperity, peace, and civil social relationships. Which is it?

Perhaps Boaz need not choose. Perhaps private property is intrinsically valuable, and so should be inviolate regardless of the consequences; while, at the same time, it also produces the best results, and so should be inviolate on consequentialist grounds, too. As Rothbard (1976, 40) memorably put it,

> It so happens that the free-market economy, and the specialization and division of labor it implies, is by far the most productive form of

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> economy known to man, and has been responsible for industrialization and for the modern economy on which civilization has been built. This is a fortunate utilitarian result of the free market, but it is not, to the libertarian, the *prime* reason for his support of this system. That prime reason is moral and is rooted in the natural-rights defense of private property. . . . Even if a society of despotism and systematic invasion of rights could be shown to be more productive than what Adam Smith called "the system of natural liberty," the libertarian would support this system. Fortunately, as in so many other areas, the utilitarian and the moral, natural rights and general prosperity, go hand in hand.

This is the orthodox position, which tries to marry instrumentalist and intrinsic defenses of libertarianism while giving primacy to the latter. Boaz and, in the end, Murray follow this line. But they come no closer than Rothbard did to explaining the remarkable coincidence that libertarianism "happens" to be the system that does best on both a priori and a posteriori grounds.

Is it just amazing good fortune that the armchair philosopher, reflecting on the different forms of individual ownership and on the metaphysics of labor mixing, reaches the same conclusion—libertarianism—as the economist studying the effects of minimum wage laws and the causes of business cycles, the sociologist investigating the war on drugs, and the political scientist probing the rationality of democratic decision making? Divine intervention might seem to be the only thing that could make sense of this libertarian straddle: the notion that one need not choose between a priori and a posteriori rationales for a libertarian world (although, if one had to choose, one would choose the a priori rationale), because such a world would be the best possible world in every respect.

The effect of libertarian straddling on libertarian scholarship is suggested by a passage in the scholarly appendix to Boaz's collection of libertarian essays, *The Libertarian Reader*. There, Tom G. Palmer (also of the Cato Institute) writes that in libertarian scholarhsip, "the moral imperatives of peace and voluntary cooperation are *brought together* with a rich understanding of the spontaneous order made possible by such voluntary cooperation, and of the ways in which coercive intervention can disorder the world and set in motion complex trains of unintended consequences" (Boaz 1997b, 416, emphasis added). Palmer's ambiguous "brought together" suggests (without coming right out and saying) that even if there were

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no rich understanding of spontaneous order, libertarianism would be sustained by "moral imperatives." But in that case, why develop the rich understanding of spontaneous order in the first place, and why emphasize its importance now that it has been developed? Spontaneous order is, on Palmer's own terms, *irrelevant*, since even if a rich understanding of it yielded the conclusion that markets are *less* orderly or less spontaneous than states, or that the quality of the order they produce is *inferior* to that produced by states, we would still be compelled to be libertarians by moral imperatives. The premise of the philosophical approach is that nothing can possibly trump freedom-cum-private property. But if libertarian freedom is an end in itself and is the greatest of all values, one's endorsement of it should not be affected in the slightest by such empirical questions as whether libertarianism would spell starvation or warfare. The premise of the empirical approach is, conversely, that such consequences *do* matter. Why investigate the effects of libertarianism if they could not conceivably outweigh the putative intrinsic value of private property? If a priori reasoning tells us that laissez-faire capitalism is just, come what may, then why should we care to find out what may, in fact, come?

The great merit of Boaz's *Primer*—other than clearly and forcefully presenting the state of libertarian thinking on both philosophical and empirical questions—is that it confronts this conundrum openly, honestly, and insightfully. Boaz writes:

> This is not to say, Let justice be done though the heavens fall. Of course consequences matter, and few of us would be libertarians if we thought a strict adherence to individual rights would lead to a society of conflict and poverty. (84)

How, then, does Boaz justify his fealty to the orthodox fusion of consequentialist and nonconsequentialist approaches, and the priority it necessarily gives the latter? He continues:

> Because individual rights are rooted in the nature of man, it is natural that societies that respect rights are characterized by a greater degree of harmony and abundance. Laissez-faire economic policy, based on a strict respect for rights, *will* lead to the greatest prosperity for the greatest number. But the root of our social rules must be the protection of each individual's right to life, liberty, and property. (Ibid.)

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Boaz's attempt to resolve the quandary is borrowed from Ayn Rand: "individual rights are rooted in the nature of man." "Humans," Boaz elaborates, "come into the world without an instinctive knowledge of what their needs are and how to fulfill them; as Aristotle said, man is a reasoning and deliberating animal. . . . So they need a social system that allows them to use their reason, to act in the world, and to cooperate with others." But since "we think and act individually" (61), only a social system such as libertarianism, one that respects human individuality, will manage to meet human needs.

That, however, is a claim about the empirical consequences of libertarianism. As such, its validity cannot be known in advance. Only if, as a matter of fact, empirical investigation and experience indicate that libertarianism *does* meet human needs better than other social systems is Boaz's thesis validated. If another form of individualism, such as social-democratic liberalism, proves better able to meet human needs than libertarianism, then we would, by Boaz's argument, be required to endorse it. And if this research reveals that Boaz is mistaken in his identification of the human "essence"—if it is our sociality (as Aristotle believed), or our mortality, or our historicity, or our evolutionary origins, rather than our individuality, that actually determines our needs—then we should not restrict our options to forms of individualism, libertarian or otherwise. A non-individualist social system might be the one most appropriate to human beings; only empirical investigation, not moral imperatives, could say.

Moreover, the Randian argument is opaque and, to the extent it is clear, it seems to be wrong on almost purely logical grounds. What, exactly, does it mean for action and thought be individualistic? Clearly it is *possible* for people to act collectively, whether through cooperation or coercion; and it is even possible for them to "think" collectively, by learning from, or being brainwashed by, each other and their predecessors. So the claim that "we think and act individually" is either inaccurate or trivial: if individual participation in collective action and thought makes them count as individual action and thought, then all action and all thought are individualistic. Boaz may be speaking loosely, however. Perhaps he means that people think and act *most effectively* to meet their needs when they think and act individually. But this is clearly false. Thinking without learning from others would reduce us to the

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level of newborn infants. And acting in isolation from others would deprive us of all the forms of cooperation and coercion that make survival, let alone civilization, possible. Included among these are the very institution that Boaz is trying to defend, for as he would be the first to recognize, the market is a vast engine of cooperative action.

Perhaps, then, Boaz means by "individual" action and thought "free" action and thought. But it is unclear why we should believe that free thought is most at risk from other people: the greatest barriers to free thought are often self-imposed, and the influence of others can often wake us from dogmatic slumbers. As for action, we have already seen that action in free markets is no freer, in the negative sense, than action in any other context. Which leaves us, again, with positive freedom, in the sense of a wide variety of choices of action. If this is what the Randian claim is intended to mean, however, we still lack an a priori reason for believing that "individual action" will be more conducive than collective action to meeting human needs. Perhaps giving individuals more choices simply enables them to make more mistakes. Nor have we grounds for connecting positive freedom to libertarian politics. The Randian argument attempts to go from the satisfaction of human needs to freedom. But negative freedom is violated equally by all legal systems, including libertarianism; and positive freedom and meeting human needs are the very rationales social democrats use for interfering in untrammelled capitalism.

Boaz's attempt to reconcile philosophical and consequentialist libertarianism fails, then, in at least two ways. First, the attempt does not effect harmony between the two approaches; in justifying individual rights through their ability to meet human needs, it subordinates the a priori to the a posteriori. Faced with the choice between libertarianism, come what may—"let the heavens fall"—and libertarian consequentialism, Boaz's argument wisely opts for consequentialism, but this negates the orthodox straddle Boaz wants to affirm. Second, consequentialism requires empirical evidence. But, as we saw in Part I, consequentialist libertarians do not yet appear to have established a valid reason why government intervention in a free-market economy might not sometimes be better at meeting human needs than laissez faire. The allegedly individualistic nature of "man" is no such reason, because we are not, in fact, particularly individualistic, and because freedom does not seem, a priori, to be

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particularly helpful in meeting our needs or in fending off social democracy.

Elsewhere in the *Primer*, however, Boaz does make consequentialist arguments of sufficient generality to justify libertarianism, if they are sound. Perhaps, then, we should interpret his Randian argument as relying, in un-Randian fashion, not on "the nature of man," but on these other empirical claims.

Orthodox Consequentialism

I count two major lines of consequentialist thought in *Libertarianism: A Primer*, and these arguments faithfully represent orthodox libertarian thinking at the end of the twentieth century.

Boaz's first consequentialist theme is the already-mentioned idea of *spontaneous order*. He claims that "the great insight of libertarian social analysis is that order in society arises spontaneously, out of the actions of thousands or millions of individuals who coordinate their actions with those of others in order to achieve their purposes" (16). In *The Libertarian Reader*, Boaz goes so far as to allow explicitly that "if individuals using their own knowledge for their own purposes didn't generate a spontaneous order of peace and prosperity, it would make little sense to advocate either natural rights or free markets" (Boaz 1997b, xv).

Spontaneity is too wide, however, and *order* too empty, to carry the great weight contemporary libertarians place on spontaneous order. Spontaneity is too wide because, inter alia, *democracy* is a spontaneous order (diZerega 1989). If the absence of central direction is sufficient to justify an order, there would seem to be nothing wrong with supplementing the market order with a democratic one. More important, "order" is hardly an end in itself. The free market is an order; democracy is an order; bureaucracy is an order; a concentration camp is an order. Their orderliness says nothing about their desirability. It is not order as such, but the ends an order produces, that determine whether or not it is a good thing.

That spontaneous order is "the great insight of libertarian social analysis" makes sense only if one accepts Hayek's notion that what motivates those who would interfere in the market must be the conviction that it is not orderly enough: the idea, as Boaz puts it, "that smart people could plan an economic system that would be

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better than the unplanned, anarchic market" (205). This notion had some justification at the beginning of the twentieth century, when Hayek used it to explain why his fellow economists—whose views he tended to equate with intellectual opinion in general—did not accept his and Mises's argument against the feasibility of socialism. But however useful this notion was in explaining the myopia of socialist economists (and Fabian and Progressive noneconomists), it is now thoroughly outdated. Boaz follows Hayek in failing to recognize that it has been roughly half a century since a desire for planning motivated many interventionists (or even many socialists) in the West; there is no longer even a tacit acceptance of planning as a means to egalitarian ends among most on the left.[8] If anything, a revulsion against planning, hierarchy, and power—a deeply libertarian current of feeling—has driven the postwar left. This anti-authoritarian sentiment, which had always been the heart of leftist thought but was sometimes eclipsed by the romance of the state, took aim at "planning" long before 1989—in reaction against Auschwitz, Hiroshima, the Gulag, and Vietnam. It crested in the 1960s, and Western intellectual life has been a great stream of anti-authoritarianism ever since. Hayek's attacks on the "engineering" or "planning" mentality rarely manage to adduce as an exemplar of this mentality anyone who has been alive since 1946 (when Keynes died). There are, to be sure, "planners" in high government office—Hillary Clinton and Ira Magaziner come to mind. But Boaz errs in accepting Hayek's belief that *intellectual* (rather than bureaucratic) thinking is suffused with "the idea of planning" (202). Hayek appears to have been simply ignorant of the antibureaucratic influence exercised on modern thought by Marcuse, the Frankfurt School, the New Left, Habermas, Foucault, Derrida, MacIntyre, Taylor, even Rawls and Dworkin. Hayek's notion that the key to understanding contemporary intellectual life is to be found in the works of such writers as H. G. Wells (Hayek 1988, 67) can only be characterized as cranky.[9]

"Spontaneous order" constitutes an argument for libertarianism only as a rebuttal to a mostly defunct version of interventionism. This argument misperceives the nature of modern culture and, in doing so, demonstrates libertarianism's extreme cultural marginality. In the concluding part, I will suggest that cultural marginality could be turned to advantage, but only if libertarians were to engage in serious reflection about how their opposition to central planning

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differs from, and might improve upon, that of the leftist cultural mainstream. Unfortunately, libertarian intellectual marginality is not, at present, a fruitful attempt to stand back from unwarranted conventional assumptions. It is instead a willful isolation from the mainstream that makes an accurate grasp of its assumptions impossible. It amounts to contempt for anyone who disagrees with libertarianism, based on profound misunderstandings of their reasons for doing so. This is why it is a great shame that Boaz relies so heavily on arguments from "spontaneous order" and on the caricature of nonlibertarian thought that they depend upon. Unfortunately, this mistake is all too common among libertarians.

Boaz's second major consequentialist rationale for libertarianism is drawn from public choice theory—the application of economic assumptions to political behavior. As James Buchanan and Gordon Tullock (1962, 23) put it, "the economic approach . . . assumes man to be a utility-maximizer in both his market and his political activity." In explicating this assumption, Boaz inadvertently puts his finger on exactly what is wrong with it. "Why," he asks, "should the guy who graduates from college and goes to work for Microsoft be self-interested, while his roommate who goes to work for the Department of Housing and Urban Development is suddenly inspired by altruism and starts acting in the public interest?" (193). One answer is obvious: the very fact that the second roommate seeks a job in government may indicate that he is more interested in serving the public than in financial gain. (The civil service is hardly known as the place to make big money.)

A more subtle possibility is that after arriving at work, general or local expectations may alter even initially self-interested motivations. If the ethos of a government bureaucracy discourages self-interest, or if it is widely thought inappropriate for civil servants to be self-interested, these pressures may shape the second roommate's motives even if he started out being self-interested. That there are such general pressures is evident: what *defines* the market is that it is the sphere where the pursuit of self-interest is considered legitimate. Conversely, self-interest is accorded limited legitimacy, at best, in the public sphere. To maintain that, under these circumstances, people in both the public and private spheres *must* be equally selfish is unwarranted. Moreover, introspection tells us that we sometimes act ideologically or altruistically, and casual observation (borne out by a wealth of political-science data) suggests that

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in politics, we do so often—as when we vote, which can almost never make sense as an act of self-interest, given the minuscule chance that one vote will affect an electoral outcome. Do *libertarians* devote their lives to their cause out of self-interest? Hardly.

This does not mean that public choice theory is useless. Undoubtedly, government officials often transgress the altruistic norms to which they are expected to adhere. Empirical investigation can tell us when this is, and when it is not, the case. The problem is that if public choice theory is to do the work libertarians expect of it, we must assume that self-interest is *universal*, such that we can *always* expect government officials to work against the public interest. This assumption, however, is falsified not only by everyday acquaintance with political actors, but by empirical research (see Lewin 1991).

Such research has not been carried out by public-choice scholars, but this is not all that surprising. If one presumes to know, a priori, what the results of such research will be—as scholars who accept the Buchanan-Tullock assumption do—then why should one bother to do research designed to *test*, rather than confirm, the asumption? Public choice theory has had the same debilitating effect on libertarian empirical research that we might expect libertarian philosophy to have. Like libertarian philosophy, public choice theory, when deployed as an assumption rather than a hypothesis, obviates serious investigation into the way the world actually works. As the chairman of the Cato Institute, William Niskanen (1993, 151), himself a public-choice theorist, has written recently, "much of the [public choice] literature is a collection of intellectual games. Our specialty has developed clear models of first and second derivatives but cannot answer such simple questions as 'Why do people vote?'" (See Green and Shapiro 1994; Friedman 1995).

The Crisis of Libertarian Scholarship

We have reviewed several consequentialist arguments for libertarianism, and we have found all of them to be inadequate. By "inadequate," I must emphasize, I mean unable to justify full-scale libertarianism. These arguments may well be adequate to justify skepticism about government, and therefore, perhaps, movement toward smaller government; but they do not get one all the way even

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to Murray's watered-down version of libertarianism. The simplistic trend-line perception that government doesn't work fails to explain why we should continue to expect (federal) government failure in every case. The equation of happiness with responsibility ignores too many other elements of happiness to be credible. The theory of spontaneous order does not sustain the claims of civil society over those of the democratic state, and it does not explain why an unjust order is preferable to justice and some measure of "disorder." Public choice theory is neither logical nor true as the type of universal prediction it would have to be in order to sustain libertarian conclusions.

There is a deeper problem with the consequentialist approach, however, than the fact that there seems to be, at the present moment, no adequate consequentialist reason for favoring libertarianism. This is that consequentialism is inherently an "at the present moment" proposition. Even if there were some reason to think that all government action has bad consequences, an empirical claim of this sort is, by nature, open to falsification in the future. So libertarian consequentialists could never rest easy. They would always have to keep an open mind; for them, the task of studying the changing world would never end. They could never be sure that new observations would not demand new political conclusions. They would, accordingly, have to maintain much more psychological distance between themselves and their politics than libertarians are accustomed to. Consequentialism is conducive to scholarship and to scholarly habits of mind, not to ideology and political crusading.

As Boaz puts it, with typical and admirable candor, "most libertarians conclude that liberty is better protected by a system of individual rights than by simple utilitarianism or economic analysis" (84). In other words, most libertarians conclude that once we have decided that "liberty" (inviolate private property) is the desideratum, we should eschew consequentialism because it is a less reliable way to achieve inviolate private property than is a priori philosophy. This is undoubtedly true, but how can we decide that inviolate private property *is* the desideratum without doing empirical research? Only by accepting the premise Boaz sensibly rejects: that we should be libertarians "let the heavens fall." A priori rights are conducive to the untroubled sleep and closed minds of libertarians. But as Boaz points out, there would be hardly any libertarians in the first place if the chief rationale for libertarianism were a priori

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rights theory. Philosophical libertarianism is plausible only to the already-convinced. That we should confer inviolability on property holdings derived from labor "mixing" at the possible cost of human suffering, starvation, or civil strife strikes nonlibertarians as ridiculous.

Thus, the libertarian dilemma. Libertarian philosophy is self-sustaining if one accepts its premises, but one would only accept them if one had already been pushed in a libertarian direction by consequentialist considerations. Yet consequences are irrelevant once the philosophical premises are accepted. Libertarian philosophy repudiates social science, but it needs social science if it is to be persuasive. On the other hand, libertarian social science needs libertarian philosophy to achieve closure. Empirical research does not, as of yet, seem to have legitimately gotten anyone 100 percent of the way to libertarianism; there remain, at the very least, some public goods and, in principle, the need for economic redistribution. Libertarian philosophy fills the gap between what free-market economists can prove about the undesirable consequences of government intervention and the absolute prohibition of all intervention. Consequentialist and nonconsequentialist arguments for libertarianism may be antithetical in principle, but they are symbiotic in practice. The resulting organism, unfortunately, can neither swim nor fly. The weaknesses of each of its two parts are aggravated by those of the other.

At the end of Part I, for example, I suggested that Murray's flawed localism may depend on his adherence to libertarian philosophical precepts that are alien to his avowed consequentialism. Completely disregarding his own eudaimonism, which is embodied in the claim that freedom "is as indispensable to happiness as oxygen is to life" because it "is the stuff by which we live satisfying lives" (4), Murray simultaneously maintains that "it is wrong for me to use force against you, because it violates your right to the control of your person" (6). We should be libertarians, then, for two reasons: not only because "limited government leaves people with the freedom and responsibility they need to mold satisfying lives," but because "freedom is our birthright" (35). The second, philosophical reason is responsible, it appears, for the complacency of Murray's consequentialist thinking about localism. By including a (weak) "exit" option, he makes localism compatible with (a watered-down form of) libertarianism. As long as no neighborhood

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will be *forced* to put up with an oppressive local government, Murray the libertarian philosopher is satisfied. But then what has happened to happiness as the ultimate criterion of a good society? It does not occur to Murray the utilitarian social scientist to ask whether consigning people to "city and county governments [with] the latitude that the Constitution originally gave to the states" might, in fact, sometimes make them miserable. In part this is because he assumes that happiness is reducible to satisfaction, and satisfaction to self-governance. But surely the fact that he can then equate self-governance with *freedom* must reinforce his complacency about the satisfaction/happiness equivalency.

This, however, is but a mild case, revolving around the peculiarities of Murray's version of libertarianism, of the damaging effects of the empirical–philosophical symbiosis. More acute and recognizable symptoms are Murray's willingness to accept a few trend-line tests as reason enough to conclude that government is generally incompetent; and the inability of spontaneous-order and public-choice logic, let alone evidence, to withstand skeptical attention. Libertarian philosophy lowers the logical and evidentiary standards for libertarian social science: if one believes that redistribution and regulation are immoral anyway because they violate self-ownership rights, then it is understandable that one would have a cavalier attitude about proving that redistribution and regulation cause unhappiness or "disorder," or that they always serve the venal interests of politicians and bureaucrats. The orthodox libertarian schema implies that these consequentialist arguments are superfluous. They are essentially propaganda devices, designed to convince nonlibertarians to reach libertarian conclusions for the wrong reasons.

The "right" reason is that libertarianism is inherently right, because it and it alone protects people's intrinsically valuable property rights, i.e., their "liberty." Since most people do not accept this reasoning, however, spontaneous-order, public-choice, or other free-market economic arguments may be needed to bring people around. This is the subconscious thought that seems to motivate shoddy libertarian empirical work. Murray, who is more explicitly reliant on consequentialism than Boaz but who fails even to notice the potential conflict between consequentialist and rights arguments, ironically ends up allowing an overreliance on libertarian philosophy to traduce his consequentialist concerns. Boaz, who officially supports the libertarian orthodoxy, is nonetheless driven in

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the other direction by his awareness of the libertarian dilemma. This prompts him to put more weight on consequentialist arguments than they can bear. There is indeed, for example—as Boaz points out—a powerful incentive for special interests to concentrate their energies on affecting government policies that will reap them great rewards; and there is little incentive for the public to oppose these efforts, since any one policy that is of great importance to a special interest is unlikely to cost the average member of the public more than a penny or two in taxes. In the aggregate, the concentration of government benefits and the dispersion of government costs may be of profound importance, resulting, arguably, in a tendency for the modern state to redistribute income upward. But we cannot assume a priori that this *must* always hold true, or that, when it does, it is sufficient to justify libertarian conclusions. Scholars who make such assumptions succeed only in branding public choice research as untrustworthy propaganda. James Buchanan has written that

> underneath its abstract analysis, the Virginia research program has always embodied a moral passion that our adversaries have fully appreciated. The program has advanced our scientific understanding of social interaction, but the science has been consistently applied to the normatively chosen question. How can individuals live in social order while preserving their own liberties? (Quoted in Kelley, 46)

But how scrupulous is the research produced by moral passion likely to be?

Although there is a handful of exceptions, most libertarian empirical work displays an obvious impatience to reach a foreordained antigovernment conclusion. A random and quite typical example of how poorly such work fares, even as propaganda, has appeared on the day I write these words. In response to a new book by two libertarian economists that deals, among other things, with the diversion of American Cancer Society funds to political uses, a reviewer writes:

> Were it not for the authors' strident tone, the reader might become indignant, too. . . . But their stridency gets in the way of their arguments not only here but elsewhere in the book. The authors indict the American Cancer Society and other voluntary, charitable health associations as "appendages of the Government and paid promoters

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> of an expanded welfare state." Such shrillness makes the rest of their arguments, even those supported by actual data, all too easy to ignore. (Henig 1997, 15)

In editing a journal that has received manuscripts from virtually every libertarian scholar, famous and unknown alike, I have long been struck by the consistent juxtaposition of what another observer delicately calls the "intermingling of positive statements and normative pleadings" (Whitman 1995, 218): the coincidence of libertarian philosophical sentiments with weak empirical research, leaps of logic, and contempt for nonlibertarian points of view (of which the authors usually appear ignorant). The polemical tone and deficient evidence, however, and the tarnishing of often-good ideas by doctrinaire rhetoric and low scholarly standards, are only the least of it. The worst thing is not the waste of effort that goes into producing propaganda barely veiled by the robes of scholarship. The greater tragedy is what libertarians could produce, but do not.

In considering this issue, one must distinguish between *libertarian scholarship*, which has generally been so deficient, and *scholarship by libertarians*.

Since the early days of the libertarian movement—the 1950s, when the Volker Fund (a precursor of the Institute for Humane Studies) had trouble scaring up a few dozen "classical liberal" students and scholars of promise—there has been a vast increase in the number of libertarian scholars. Between 1983 and 1993, the Institute for Humane Studies gave fellowships to 300 students, of whom one-sixth had gained faculty appointments by the end of that period (Kelley, 84). Between 1995 and 1997 alone, the recipients of IHS fellowships produced nearly 1000 publications (Institute for Humane Studies 1997, 1). The caliber of these publications is quite impressive, bordering on the spectacular. Indeed, the most notable trend among libertarian scholars of the 1980s and 1990s has been their professionalism. But the corollary of this trend is that they write about subjects that are relevant to libertarianism with less and less frequency. A plethora of libertarian scholars does not necessarily indicate an abundance of libertarian scholarship (nor, of course, does it say anything about the quality of that scholarship).

Boaz refers to "an explosion of libertarian scholarship in such fields as economics, law, history, philosophy, psychology, feminism,

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economic development, civil rights, education, the environment, social theory, bioethics, civil liberties, foreign policy, technology, the Information Age, and more" (57). Grouping these "fields" according to scholarly discipline, the list becomes: psychology, law, history, philosophy, economics, and political science. But there is in fact no libertarian scholarship to speak of in psychology and almost none in history, law, and political science, as Boaz's references indicate (296–97). The only fields in which there has, in reality, been an explosion of scholarship by libertarians are economics and philosophy. There have been virtually no contributions by libertarians to any of the other social sciences and humanities; and even in economics and philosophy, the recent abundance of work by libertarian scholars has not, by and large, been *libertarian scholarship*.

The young, professionalized libertarian economist or philosopher publishes a great deal, but on subjects that are tangential, at best, to libertarian concerns. The philosophers tend to be aware of the deficiencies of libertarian philosophy, so instead of defending Lockean property theory, they write, say, defenses of liberalism (not classical liberalism) against communitarianism and group rights theory. However, libertarian philosophy takes a back seat to the advancement of libertarian philosophers' careers not only because they find libertarian philosophy indefensible, but because they assume that a sound empirical case for libertarianism has already been made—by economists—so that defenses of untenable philosophical libertarianism are unnecessary. Among libertarian economists there is a parallel conviction that a sound philosophical case for libertarianism has already been made—by libertarian philosophers. Faced with career pressures that are even greater than those confronting philosophers, this conviction leads growing numbers of young libertarian economists, who tend to have been inspired originally by the antipositivist Austrian school of economics, to conform to the positivist tenets of their discipline, consigning Austrian economics, and libertarianism, to the status of a hobby.

Of the "explosion of libertarian scholarship" symbolized by those 900-plus publications, then, probably at least half consists of "tenure articles"—sophisticated careerist exercises in mathematical modeling by young economists, or brilliant additions to liberal (not classical liberal) theory by young political philosophers: not libertarian scholarship, but "cutting-edge" ephemera that is valuable as another line on one's vita, not because it makes important breakthroughs or

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is widely influential. Even the scholarship that is libertarian in content is often inconsequential, the better to serve the careerist imperative to publish trendy trivia or perish.

This helps explain why there has been no increase in the quality or impact of libertarian ideas that would correspond to the growing quality and quantity of libertarian scholars. Or at least, so it seems to an attentive observer of libertarian scholarship and scholarship by libertarians. Libertarian scholars may dispute this judgment, but I would ask them: What have libertarian scholars of the last 20 years produced that is both relevant to libertarianism and of lasting value?[10] It is one thing to list various topics that libertarian scholars have written about; it is quite another to tell us how these writings have fundamentally changed our understanding of the issues in question.

When we put the consequentialist-nonconsequentialist symbiosis in historical perspective we can, I think, get a clearer picture of why libertarian scholarship is (arguably) so disappointing. At the same time, we might be able to explain the curious codependence of libertarian philosophers on inadequate libertarian economics, and of libertarian economists on inadequate libertarian philosophy. Kelley's *Bringing the Market Back In*, while long on description and short on analysis, gives us the raw materials we need to sketch the historical roots of the libertarian dilemma.

IV. TRANSCENDING LIBERTARIANISM

Kelley's book serves this purpose by placing the two mainstays of contemporary libertarian consequentialism—spontaneous order theory and public choice theory—into the context of a general ferment of free-market ideas that bubbled up in the middle of the century. Kelley shows that, at the same moment when the left was also beginning to repudiate bureaucratic statism (in principle, at least), Hayek, Buchanan, and Tullock were only a few of those who challenged the burgeoning postwar megastate from the right. Among the others were Milton Friedman, Ronald Coase, George Stigler, Harold Demsetz, Yale Brozen, G. Warren Nutter, Gary Becker, and Sam Peltzman, all of the University of Chicago. The first thing to notice about this list is that every one of its members was an economist by training (Tullock receiving economics training as part of the Chicago law program). The roots of libertarianism

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were fundamentally economic—hence consequentialist. Hayek was an economist who cut his teeth in the debate between Ludwig von Mises and the socialist economists of the 1920s; Nozick became a libertarian only after being convinced that the Mises-Hayek critique of socialism was lethal. But the second thing to notice is that the resurgence of free-market economics was insufficient to create libertarianism, even though it was absolutely necessary. All of the painstaking research of Chicago- and Austrian-school economists could not explain why *every* government regulation, let alone every government redistribution of wealth, would necessarily do more harm than good. This is the aspiration, in effect, of universalist public choice theory and of the exaggerated claims now made for spontaneous order. But neither these nor any other consequentialist arguments convincingly closed the gap between a general predisposition for free markets and the rigid libertarian refusal to deviate from them under any circumstances.

This was finally achieved by two figures, Murray Rothbard and Ayn Rand, who were crucially influenced by free-market economics, but who, in an act of "creative synthesis," combined economic consequentialism with a priori libertarian philosophy to create "packages" of ideas that their followers came "to see as 'natural' wholes" (Converse 1964, 211)—doctrines that combined the a priori and the a posteriori in webs that were supposed to be seamless. Mises, the émigré Austrian economist, had taught Rothbard at his New York University seminar and influenced Rand after she emigrated to the United States, decisively shaping both authors' understanding of the free market. But where Mises had written that private property was important "not because it was the 'privilege of the property owner, but a social institution for the good and benefit of all'" (86), Rand and Rothbard regrounded private property in rights—in Rand's case, rights derived from the nature of man; in Rothbard's, rights derived from self-ownership. This instantly rendered the actual, economic basis of Rand's and Rothbard's libertarianism philosophically irrelevant. But in the ideological packages they created, economics continued to play a central—albeit, strictly speaking, an illogical—role.

The power of *Atlas Shrugged* stems from Rand's evocation of accelerating social disintegration. At first there is just a vague sense that something is going wrong, but soon there are shuttered factories, mass unemployment, riots, the unraveling of civilization itself,

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at every step supported by the clamor of public opinion, manipulated by demagogues. *Atlas Shrugged* extrapolated into a fictional future the most nightmarish tendencies Rand and her beleaguered free-market friends saw around them in the dark days of the 1940s and 50s. The result is a tale of the ruinous consequences of state control of the economy. Without free-market economics, Rand could have produced neither her dystopian vision nor the ideological "package" that went with it.

Economics is, however, insufficient to explain even the extra-philosophical appeal of *Atlas Shrugged*. What gives the novel its force, for those who are affected by it, is Rand's description of how, in response to each politically induced crisis, new forms of intervention are instituted that lead to even greater breakdowns. It is a novel about a slippery political slope. Rand, however, could not competently analyze politics; when she tried, the results were disastrous. For her, the problem was that politicians and their intellectual allies were mendacious. They purveyed leveling policies that were bound to fail and that, therefore, could only have been motivated by envy of successful industrialists and other "men of the mind." In short, not only the means of political power but the ends they served were "evil."

Rand's way of trying to stop the perceived slide of the United States toward socialist catastrophe, then, was to attack the envy she thought drove real-world egalitarian politics and, as the alternative, to make a virtue out of selfishness. Her solution to her *psychologized* depiction of the *political* problem was a *philosophical* justification for laissez-faire capitalism that unwittingly obviated the *economic* analysis without which the political problem would not have seemed problematic to begin with. Rand was perceptive enough to see that politics must be related to culture, but her form of political analysis reduced culture to a simplistic psychological disease, envy, for which a simplistic philosophy, egoism, was the cure. In this way she transmuted the essentially consequentialist force of her dystopian vision into a set of a priori precepts that made consequences irrelevant.

Rothbard reached the same terminus by a slightly different route. He, too, thought it was only a matter of time before "statism" led to economic collapse (e.g., Rothbard [1965] 1979, 28). Although he eschewed egoism, however, he was as inept as Rand at understanding the political tendencies he feared. Instead of recognizing that, in

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effect, he was afraid that *democratic politics itself* might undermine economic prosperity and thus modern civilization, he revived a bourgeois version of class theory according to which there is a "political class" that, abetted by the self-serving nostrums of intellectuals, leeches off the "productive class." Accordingly, the way to avoid economic collapse was through a principled form of democratic politics, one that would rally the oppressed "net tax-payers" against the parasitic political class by condemning any violation of the producers' private property "rights" as morally unforgiveable—as with Rand's egoism, nullifying the economic analysis on which Rothbard's fear of modern politics was based. Both Rand and Rothbard, overeager to seal the case for expelling the state from the economy that economic arguments alone apparently could not clinch, had to cast themselves as participants in a Manichean struggle against unscrupulous wrongdoers with impure motives. This already betokened a deep complacency about the validity of their own views, such that anyone who disagreed with them must be a deliberate enemy of truth; and it marked the beginning of the anti-intellectualism that continues to disfigure libertarian thought. The virtually unanimous opposition of scholars and intellectuals to a view as self-evidently true as libertarianism seemed to be to Rand and Rothbard must, they thought, be a function of the intellectuals' perversity (rather than of the weaknesses of libertarian argument and evidence). Most germane to our inquiry, however, their Manicheanism betrayed the perception that had animated their vision in the first place: the perception that mass democratic politics is characterized by an ignorance—not an evil intention—that can have unfortunate but unintended consequences.

This perception is easily grasped by anyone who finds himself disagreeing with the *demos* and alienated by the cultural platitudes that sustain the political consensus of the moment—whatever it is. One need not believe in any particular brand of economics or political philosophy to realize that the voice of the people is not the voice of God. But in postwar America, free-market economists were uniquely positioned to hit upon this realization, and however unreflectively, they did. This is the undercurrent that sparked the libertarian movement and continues to do so. If one has learned the counterintuitive lessons of free-market economics—that rent control causes housing shortages, that minimum-wage laws cause unemployment, that state control of the economy causes business cy-

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cles, that business regulation is as likely to foster monopoly as to temper it—then it is inevitable that one will find oneself deeply at odds with public opinion and the politics it sustains, for all of these counterproductive measures are overwhelmingly popular. The resulting political alienation was channeled by Rand and Rothbard into libertarian ideology, but instead it might have been the source of a penetrating critical inquiry into the realities of modern government and culture. The problem is that such an inquiry might not have produced libertarian recommendations. The only way to ensure those recommendations before the inquiry had been concluded—since consequentialist inquiries are never concluded—was by turning to libertarian philosophy. That is what Rand and Rothbard did, rendering further empirical inquiry otiose.

Meanwhile the left has, in practice, been prevented from taking advantage of its own frequent disagreements with public opinion by its historically contingent attachment to democratic politics as the primary means to its ends. This allegiance has forced leftist political and cultural critics to presuppose the possibility of rational democratic politics—if only the corrupting influences of money, commercialization, and corporate control could be excised. Libertarians have the basis for a deeper critique of modern culture: they understand that what corporations sell, consumers want to buy. But, precluded by their own ideology—which effectively celebrates whatever consumers freely choose as, *ipso facto*, good[11]—from criticizing consumerism, libertarians end up being as unthinkingly apologetic about mass culture in its commerical manifestations as the left is about mass culture in its political guise. And by apotheosizing the intrinsic value of private property, libertarian philosophy renders the investigation of even political culture—the very thing that drives libertarian concerns about irrational public policy—irrelevant.

Rand and Rothbard confronted a slide toward ever more government intervention that seemed almost unstoppable. What was frightening about this accelerating process is that it could reasonably be expected to have severe economic and social consequences when it led, as it seemed it must eventually, to socialism. The spiraling growth of government was not bad in itself, but in its effects and in the effects of its anticipated denouement. Economics, a legacy of the eighteenth-century Enlightenment's determination to turn reason to the service of earthly happiness (Hazard 1963;

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Muller 1997), was the starting point for these dystopian fears because it diagnosed the dangers to which popular policies might lead. But these fears were so strong that it seemed imperative to begin a war to save civilization, and nobody mans the barricades in defense of marginal-utility theory. As Rothbard wrote in 1965,

> only forms of natural or higher-law theory . . . furnis[h] a sense of necessary immediacy to the libertarian struggle by focusing on the vital importance of bringing existing criminal rulers to the bar of justice. Utilitarians, on the other hand, in abandoning justice for expediency, also abandon immediacy for quiet stagnation. ([1965] 1979, 8–9)

To paint the status quo as unjust, not merely dangerous, required convicting politicians of criminality, not merely demagoguery. But this meant making the cause of prosperity and civil peace the cause as well of Liberty; and that, in turn, meant making private property not just Mises's "social institution for the good and benefit of all," but a totem so sacred that its desecration would be unthinkable, regardless of the consequences. Hence the official libertarian willingness to put the sanctity of private property ahead of the very consequences that make free markets compelling to libertarians in the first place. The subordination of economics to philosophy by orthodox libertarianism meant that the political-economic problem that had been its original stimulus could be reconceptualized. Not popular ignorance of economic truths but evildoers in high places were the culprits; no longer was mass democracy to be feared, but instead the hoodwinking of the people by the libertarian equivalent of the left's "corporate media conglomerates": malevolent intellectuals who blind the masses to moral truths and to their own true interests. Once this transformation had been effected, the political insights that might have flowed from free-marketeers' alienation from democratic culture were lost, and with them the opportunity to extend the meliorist Enlightenment project beyond economics, toward a confrontation with the realities of modern democracy.

At roughly the same time, however, political scientists with no free-market inclinations began to document the very phenomenon—democratic incompetence—upon which such an extension might have been premised. The pivotal work was Philip E. Converse's magisterial article, "The Nature of Belief Systems in Mass

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Publics" (1964), which has been the fountainhead of three decades of subsequent research by public-opinion scholars.

Converse drew on survey data to reveal that the public's grasp of political affairs was so meager that it was questionable whether many people could be said to have what amounted to stable political attitudes at all. Unfortunately, the "nonattitudes" thesis prompted a methodological debate that distracted attention from the most disturbing implications of Converse's findings for democracy: the sheer ignorance of public opinion (a finding implicit in the earlier work of the Columbia and Michigan schools of public-opinion research), and the fact that the "constraint" on ignorance exercised by the relatively well informed was something that is, arguably, even worse than sheer ignorance: ideology. These implications have been fully borne out by a vast body of subsequent research, but they have not made a dent in nonspecialists' views of either the functioning or the legitimacy of modern democracy. Scholars with a healthy dose of cultural alienation might some day bring these questions into the center of our thinking about politics.

For instance, one might explain Converse's findings by arguing that a government as large as the modern megastate cannot conceivably be controlled by a well-informed public, since it is literally impossible to be knowledgeable about even a fraction of the many complex matters modern governments are called upon to govern. The only options for modern electors would seem to be either unmitigated ignorance or the false sense of knowledge conveyed by ideology. The attraction of free markets in particular and civil society in general is, in this view, that they have self-correcting features that place far smaller demands on anyone's knowledge than democracy does. Each person concerns herself with her own life and the system, supposedly, runs itself. Interpreted in this way, the literature on public ignorance could form the basis of the consequentialist argument the postwar free-market economists sought, but never found (without turning to philosophy), against *all* government economic intervention: for even if it cannot be shown, on economic grounds, that every intervention hurts more than it helps, it might be shown, on political grounds, that by opening the door to helpful interventions, we begin sliding toward the unhelpful ones on a slope slippery with public ignorance.

But a consequentialist rehabilitation of libertarian conclusions is unlikely to come about so easily. The magnitude of public igno-

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rance is so great already, and the consequences so far short of disastrous, that the slope does not seem so slippery any more. What at first looks like evidence for small-government conclusions may instead turn out to support the other alternative to mass democracy—effective rule by a sort of Platonic, technocratic elite (cf. Blinder 1997).

In this respect, "state theory" (see Skocpol 1985) acts as an inadvertent counterweight to public-opinion theory. State theorists have found that modern governments are often untethered from the pressures of interest groups in civil society. If they are put in charge of a suitably small area of civil society, expert state elites might be able to overcome the ignorance that plagues a general elector. (Alan Greenspan—ironically, a follower of Ayn Rand—could be seen as the prototypical technocrat-king.) What state theorists have not, to my knowledge, recognized is that the most important source of "state autonomy" may not be tax revenues or military forces, but the public's ignorance of the great majority of the things that states do.

From such considerations flow important questions that are not, at present, being asked: Who would guard the guardians? What are the relative consequences of technocratic guardianship and of self-regulation by civil society? Libertarians would seem uniquely well suited to ask such questions—not libertarians as we know them, but libertarians who stripped away the ideological detritus that has piled up during the past 50 years and who returned, in a sense, to the fraught moment when there was no such thing as libertarianism, but there was only skepticism about the new world of omnicompetent government that appeared to be the wave of the immediate future. To transcend the libertarian dilemma, these libertarians—call them post-libertarians—would need to become, in effect, proto-libertarians.

It is true that the original proto-libertarians—the Austrian- and Chicago-school heirs of the Enlightenment project—were by no stretch of the imagination free of "philosophical" taint. Buchanan's pride in the moral agenda of the Virginia school was matched by Mises's dogmatic free-marketeering, grounded in Austrian methodological apriorism;[12] and it was Milton Friedman who, after all, most famously equated capitalism with freedom. These tendencies to, in effect, confer intrinsic value on capitalism were driven by the same fears of the consequences of modern democracy that inspired

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Rand's and Rothbard's more successful ideological constructs. Like Rand and Rothbard, the proto-libertarian economists fell back on one aspect of American culture—its "common-sense" identification of private property with individual liberty, and of government with coercion—in order to fight off what seemed to be more fearsome aspects. In effectively turning toward "philosophy" rather than political science, they unwittingly confounded their own skeptical consequentialism and sacrificed the opportunity to launch a searching examination of modern democracy. But they might have done otherwise, and so might we.

If we add together the halting ideological gestures of some of these mid-century skeptics and the full-blown belief systems of Rand and Rothbard, I believe we can understand why contemporary libertarian thought is impoverished. The libertarian typically recapitulates in her own intellectual development the historical sequence just described, transmuting her belief that too much government intervention is inimical to human welfare into a consistent ideology by subordinating a posteriori to a priori considerations. The effect this transformation works on an economist is to ensure that when she is not producing career-driven publications, she is animated by the subterranean conviction that intervention is clearly immoral. Occasionally this conviction breaks the surface in the form of shrill rhetoric; sometimes as the assumption that interventionists bear a special burden of proof; often as carelessness about fulfilling her own burden.

If libertarian economists feel license to be careless because libertarian philosophy is supposed to be dispositive, libertarian philosophers feel the same license because they suppose that economics plays the decisive role. The libertarian philosopher would not be a libertarian if he did not think libertarianism would have overwhelmingly beneficial consequences, but his work as a philosopher can, by its nature, hardly be devoted to empirical matters. So he either veers off into distantly related disciplinary matters or—if he is one of the older generation of philosophers, who continue to deal with libertarian issues—he takes shrillness and condescension to new levels; begs the important questions; or disdains to understand his antagonists. These pathologies stem, I believe, from the libertarian philosopher's intuitive grasp of the irrelevance of the very thing his ideology has saddled him with defending: libertarian philosophy. To the libertarian economist, libertarian economics is irrelevant be-

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cause officially, libertarian philosophy is fundamental. But the libertarian philosopher recognizes, deep down, that it is really the other way around, and this makes him as impatient in his own work as the libertarian economist is in hers.

Despite this bleak tableau, there is reason for optimism about the potential buried beneath decades of libertarian ideology. It may be appropriate to conclude, then, with some comments about what it is that one might hope for from post-libertarian scholarship, and what one should not.

On the one hand, the reclamation of the Enlightenment legacy can lead in far more directions than the political-science path I have suggested. It is surely important to launch anthropological, economic, historical, sociological, and psychological investigations of the preconditions of human happiness. And post-libertarian cultural historians and critics are uniquely positioned to analyze the unstated assumptions that take the place of the requisite knowledge in determining democratic attitudes. A prime candidate would seem to be the overwhelming focus on *intentions* as markers for the desirability of a policy. If a policy is well intended, this is usually taken to be a decisive consideration in its favor. This heuristic might explain the moralism that observers since Tocqueville have noticed afflicts democratic cultures. To date, this phenomenon is relatively unexplored. Analogous opportunities for insightful post-libertarian research can be found across the spectrum of political behavior. What is nationalism, for example, if not a device that helps an ignorant public navigate the murky waters of politics by applying a simple "us-versus-them" test to any proposed policy?

Pursuit of these possibilities, however, must be accompanied by awareness of the degeneration of postwar skepticism into libertarian ideology. If the post-libertarian social scientist yields to the hope of re-establishing through consequentialist research the antigovernment politics that has until now been sustained by libertarian ideology, she will only recreate the conditions that have served to retard serious empirical inquiry. It is fashionable to call for political engagement by scholars and to deny the possibility that one can easily isolate one's work from one's political sympathies. But difficulty is no excuse for failing to try. Libertarians have even less of an excuse than most, since, having for so long accused the intellectual mainstream of bias and insulation from refutation, they should understand better than anyone the importance of subverting one's own

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natural intellectual complacency with the constant reminder that *one might be wrong*. The only remedy for the sloppiness that has plagued libertarian scholarship is to become one's own harshest critic. This means thinking deeply and skeptically about one's politics and its premises and, if one has libertarian sympathies, directing one's scholarship not at vindicating them, but at finding out if they are mistaken.

To transcend libertarianism, in short, is to view its underlying concerns as stimuli to research that may, or may not, produce libertarian conclusions. In this sense there is no reason that nonlibertarians might not make better post-libertarians than libertarians themselves. But for libertarians, the benefits of transcendence are greater. Only if one divorces oneself from all attachment to libertarian ideology does it become possible to dispel the gnawing fear that the facts will not bear out one's predetermined conclusions. This—the perpetual obligation to defend a position before one has the necessary information to assess its accuracy—is a terrible burden to bear. The consequentialist libertarian, having made the leap from skeptic to prophet, comes to identify himself with his political convictions. So he lives, or should live, in fear that the next social problem or environmental threat or economic crisis will be the one that finally shows those convictions to be inadequate. This is the psychological problem for which orthodox libertarianism is a palliative. Once consequentialism is overlaid with "philosophy," one should, in principle, have no fear: libertarianism is right, come what may. But among conscientious libertarians the fear persists beneath the surface; as Boaz understands, the consequences of libertarianism remain important to libertarians, even when they try to bury such concerns beneath layers of ideological sediment.

The remedy for this persistent fear is the same as that for the low intellectual standards of libertarian scholarship: blast away the ideology, strip off even the ideological impulse, by withdrawing one's emotional commitment to political conclusions that have not yet been justified. Even while this makes room for intellectual seriousness, it promotes a joyous freedom of inquiry: one need no longer fear where one is headed. The moment a libertarian leaves libertarianism behind, reality loses its threatening aspect; his intellectual marginality becomes a precious source of fresh insight into every aspect of politics and culture. It seems paradoxical but true that high seriousness can be enjoyable, and that political disengagement

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can produce genuine insights into politics. The paradoxes may be dispelled, however, by realizing that disengagement is equivalent to alienation. Alienation plants the seeds of doubt, doubt nourishes serious thinking, and serious thought is the only alternative to an intellectual complacency that must always be shadowed by fear of its own simplifications.

NOTES

1. Cornuelle's article, originally published in the *Times Literary Supplement* of April 5, 1991, under the title of "New Work for Invisible Hands," was expanded into "The Power and Poverty of Libertarian Thought" in *Critical Review* the next year (Cornuelle 1992).
2. The scare quotes are needed because obviously, even consequentialist approaches to libertarianism are "philosophical" in that they presuppose a priori the intrinsic, philosophically determined value of whatever consequences they take to be desirable. Another terminological difficulty is that, rather than deontologically defending a set of property rights as inviolate, libertarians might treat the form of freedom associated with private property as a *telos* to be maximized by balancing one person's degree of freedom against that of another. The question, then, is not technically one of consequentialism versus deontology, or of empirical research versus philosophy, but of whether the libertarian version of freedom is intrinsically (rather than instrumentally) valuable. The question is whether libertarianism—if it is good—is good in itself, or only insofar as it brings about some *other*, independently valuable, *telos*.
3. See Scitovsky 1992 for data supporting an alternative view.
4. The conditional language is meant to suggest that I have no more proved my claims about community than has Murray, and that research into the psychological qualities of "voice" versus "exit" communities is called for.
5. This is not the place to defend or reconstruct utilitarianism, but a couple of points should be noted. First, not all utilitarians believe in implementing the will of the majority, as Boaz's examples assume. Majoritarian "preference" utilitarianism is much closer to the libertarian sanctification of individual will than "psychological" utilitarianism, which would implement policies that people oppose if these policies would achieve people's objective happiness. Libertarianism satisfies individuals' *preferences*; preference utilitarianism satisfies aggregated preferences; but psychological utilitarianism sanctifies people's *happiness*. For psychological utilitarianism to sanction genocide, it would have to be true not that a majority wanted to kill a minority, but that the happiness of a majority would be so greatly increased by killing the minority that the minority's suffering, and the loss of the happiness it would have experienced over its lifetime, would be out-

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weighed. Moreover, a psychological utilitarian should sacrifice the happiness of some to increase that of others only if there is no way of increasing the majority's happiness without sacrificing the minority's—e.g., by changing the hateful attitudes of the majority, so their happiness is no longer antithetical to the existence of the minority. Third, it may be truer to the concern for people's psychological well-being to distinguish negative and positive utilitarianism, and rank them lexically, than to treat suffering and happiness as parts of the same continuum, so they can be traded off against each other. In this view, the happiness of many could not be extracted at the price of the suffering of a few, although the suffering of many *could* be alleviated at the price of the suffering of a few. Fourth, happiness (and suffering) are not fungible masses that do not change their psychological significance regardless of whether they are spread over many people or concentrated in a few: slight gains in happiness, or even slight reductions in suffering, cannot be aggregated over many people so as to outweigh the agony of a few without violating the purpose of utilitarianism, which is not, properly, to fetishize the size of a blob of "happiness," but to increase the proportion of happy (or reduce the proportion of unhappy) *individuals*.

In addition, it should be kept in mind that if we reject utilitarianism because of the impermissibility of sacrificing one person's interests (converted by nonutilitarians into inviolate rights) to those of another under any circumstances, we must then allow the suffering of many to persist rather than violating the rights of a few. This is the upshot of philosophical libertarianism: if the miserable lives of everyone in the world could be transformed into joyous reveries at the cost of imposing a tax of one penny on a billionaire, the tax must be rejected. This, of course, is a fanciful version of the "let the heavens fall" argument against philosophical libertarianism developed in the text—as fanciful, perhaps, as the fear that the only way to increase overall happiness is through genocide. While libertarianism would not allow a majority to kill a minority outright, it *would* allow a majority—or a minority—to kill the rest of society indirectly, by letting it starve to death. Every *reductio* of utilitarianism can be converted into a *reductio* of philosophical libertarianism simply by changing the source of the terrible consequences envisioned from bands of hateful genocidists into the operation of impersonal market forces. This is why social democracy has an advantage, in principle, over both utilitarianism and libertarianism. The only ways for libertarians to overcome this advantage are (a) to show that in reality, libertarianism would serve the ends of liberalism—protecting everyone, as much as practicable, from reductions in freedom *or* happiness—better than the statist means preferred by social democrats; that is, to adopt both Rawls's principle of equal liberty and his subordinate principle of distribution as their own; or (b) to show that in reality, libertarianism would serve the ends of a utilitarianism modified in the ways suggested in the previous paragraph, so as to produce something like Rawls's difference principle—interpreted as a mandate to reduce suffering and only then in-

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crease happiness—but without being subordinated to his principle of equal liberty.

6. For other problems in Lockean property theory, see Weinberg 1997.
7. The issue is more complicated than is indicated by its treatment in the text, in that Berlin seems to presuppose a natural state of liberty that sets the boundaries of "the area in which I could otherwise act" (Berlin 1969, 122). In the text, by contrast, I use this phrase to indicate the area in which I could act *under another system of property laws*, not under a state of nature. I justify this deviation from Berlin's meaning as follows.

   The scope of the area in which I could act if the term *otherwise* refers to a state of nature would depend on the indeterminate actions of other people in that state. Whether I could use a certain apple tree would depend entirely on whether someone else was able to seize control of it first. Therefore, "the area in which I could otherwise act" is a meaningless phrase if it is taken to refer to a sort of state of nature, as Berlin seems to have in mind: we have no way of knowing how free one would naturally be. The only legitimate way to give "otherwise" some determinacy, then, is to refer not to a state of nature but to a different set of (strictly enforced) rules than the one being considered. But having done this, we have undermined the notion that different property systems differentially violate negative, rather than positive, liberty. For each system of property is a set of coercively enforced rules, and all of them equally restrict the area in which one could "otherwise" act, when this word refers to another system of property.

   Berlin would agree with me, I think, that, contrary to the notion that libertarian property laws are noncoercive, all coercively enforced laws, including libertarian laws, violate negative liberty, since they all deliberately constrain "the area in which I could otherwise act." A law against "theft" deliberately constrains the area of action that would otherwise be open to the "thief," and therefore it clearly violates the "thief's" negative liberty. But if any system of property violates my negative freedom to "steal" the property assigned to another, which I would "otherwise" be free to take (that is, if it weren't for the law that defines this action as "theft"); if the negative freedom to transgress its rules is equally violated by any system of property; then how can I intelligibly compare the "breadth" of my area of freedom under different property systems? Inasmuch as there is no way to compare different systems against a state of *natural* freedom, since such freedom, at least regarding world ownership, is indeterminate; and inasmuch as each *social* system establishes a new set of negative freedoms that blankets all of the property of the society, in the very act of enforcing prohibitions against another system's set of negative freedoms; it would seem that the only way to measure the amount of freedom left to people by a set of property laws is to compare one's ability to attain one's goals under that system and under different property laws—which Berlin defines as positive liberty.

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Although the intersystemic comparison of degrees of positive liberty seems the only legitimate way to overcome the indeterminacy of Berlin's definition of negative liberty, there is also an illegitimate way to do this: namely, by unreflectively equating one system of property rights with what is natural. In this way, one can give content to the otherwise empty yardstick of natural freedom on which Berlin's view appears to be predicated, allowing one to believe that any other system does not merely distribute negative freedom differently than the system one has privileged as "natural," but that the "natural" system is uniquely noncoercive, while only its competitors violate negative liberty. This is what libertarian philosophers do when they portray status-quo property relationships, reconceived as "Lockean," as natural ones. The illegitimacy of this procedure becomes obvious if one notices that if we were to privilege any other property system—say, communism, or Filmer's system of royal ownership of each prince's realm—as natural, then Lockean property rights would be among those that would suddenly appear to violate negative liberty, since they would prevent the people collectively, or the king individually, from doing what they could "otherwise" do with "their" natural property.

8. I undertake a more detailed critique of the notion that "constructivist rationalism" plays a major role in left-wing thought in Friedman 1997.

9. Hayek's *Fatal Conceit*, alone among his many works of the 1960s, 1970s, and 1980s, mentions some of the figures named in the text: Marcuse (Hayek 1988, 138), Habermas (ibid., 64), and Foucault (ibid.). The desperate attempts in these passages to identify "planning" tendencies in postwar intellectual figures should not, however, be blamed on Hayek. In 1986 I served as research assistant to W. W. Bartley, III, Hayek's officially designated biographer and the "editor" of the book while it was being written—apparently by Bartley, with little noticeable input from Hayek, who was mortally ill. What Bartley characterized as confused and mostly unusable notes and passages written by Hayek, some of which ended up in the book's Appendices, apparently served as the basis of Bartley's efforts to complete a manuscript; the products of Bartley's labors were allegedly reviewed by Hayek. (James M. Buchanan writes, on the dust jacket, of his admiration for Hayek's success in turning "a somewhat rambling set of sketches . . . *into a coherent, well-constructed argument*," but I have no doubt that the credit should go to Bartley.) The extent of Hayek's supervision of the project, however, is called into question by the appearance in the book, verbatim, of passages I submitted to Bartley as suggestions for how Hayek might consider updating his critique of constructivist rationalism. Among these are the passages mentioning Marcuse, Habermas, and Foucault. Since Hayek had not previously referred to these figures in print, I was surprised to learn, upon the appearance of the book, that he would have accepted without alteration discussions of their work written by someone he had never met. This prompts the thought that Hayek may never even have seen these words, although they were published under his name. Bartley,

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who was as well qualified as anyone to determine what Hayek might have written had he been able to write, had the best of intentions in making good on Hayek's desire to see the work completed. But the resulting document may not accurately reflect Hayek's thinking in all respects. The presence of the passages on Marcuse, Habermas, and Foucault that I wrote certainly does not show that Hayek understood the sea change in postwar intellectual life. His strictures against constructivist rationalism are, I believe, obsolete legacies of his intellectual combat with socialist economists 50 years earlier.

Boaz mentions Rawls (with Marx, T. H. Green, Keynes, and Catharine MacKinnon) at one point in his *Primer*, attributing his alleged "crabbed and reactionary statism" to "the great attraction statism and planning holds for intellectuals," inasmuch as "the intellectual believes [in] . . . the application of human intelligence and rationality to the social system" (202). But Rawls is, in reality, concerned neither with planning nor with the application of intelligence and rationality to the social system (as Hayek seems to recognize; see Hayek 1976, 100), but with exactly that with which philosophical libertarians are concerned: *justice*—which he equates, as they do, with the protection of equal individual rights to freedom. His "difference principle" is an attempt to ensure that everyone is, as much as practicable, free to pursue whatever ends she values (and even this principle is trumped by Rawls's principle of equal liberty). The result of applying the difference principle would be an order every bit as spontaneous as that of a free market. If laissez-faire capitalism is the system that best ensures the welfare of the least advantaged—as consequentialist libertarians such as Conway contend—then it would satisfy the difference principle.

Whether or not that is the case, however, is a contingent, empirical question. It is therefore possible, as Nozick points out, that not laissez faire but constant government intervention might be required to satisfy the difference principle. But this does not justify the claim that Rawls is a "planner." The purpose of the intervention would not be to apply intelligence and rationality to the social system, but to apply the standards of justice—as is the purpose of libertarianism. And these standards of justice, like libertarian standards of justice, would be directed toward equal individual freedom. The redistribution a Rawlsian government might have to undertake would no more qualify as "planning" than would the redistribution of property from thieves to their victims that a libertarian government might have to undertake.

10. Leaving aside the work of various authors that has appeared in these pages, there has been solid research on the socialist calculation debate (Lavoie 1985) and, in the large corpus of Israel M. Kirzner (see, e.g., Kirzner 1973), on the role of entrepreneurship in the imperfect markets characteristic of the real world. From Austrian economics, too, has come the important work of the free banking school (see White 1984 and Selgin 1988), which holds that central banking did not improve on the performance of private

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banking systems. All of this work promises a great deal if it can be pursued outside the hostile confines of the discipline of economics (where positivist standards render it "unscientific") and isolated from libertarian philosophical influence.

11. Libertarians may disagree with this characterization of their thought, on the ground that by defending someone's "right to do wrong," they do not suspend judgment about whether it is, in fact, wrong. This standard liberal view, however, raises the question, Why should one have a right to do what one should not do? Many consequentialist reasons for such a right are conceivable—e.g., such a right is conducive to civil peace or prosperity, which are either intrinsic goods or are conducive to intrinsic goods that outweigh the bad consequences of allowing people to do what they should not. But this type of instrumental reasoning is off-limits to nonconsequentialist libertarians (and liberals). Instead, they must contend that it is intrinsically valuable to be able to do what is bad—intrinsically valuable, that is, to be able to do what is intrinsically valueless. This is a prima facie logical contradiction. For a more elaborate critique of the "right to do what is wrong," see Friedman 1996.
12. I propose the beginnings of a critique of Austrian apriorism in Friedman 1995, 23n4.

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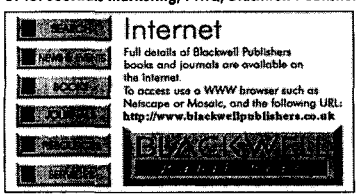
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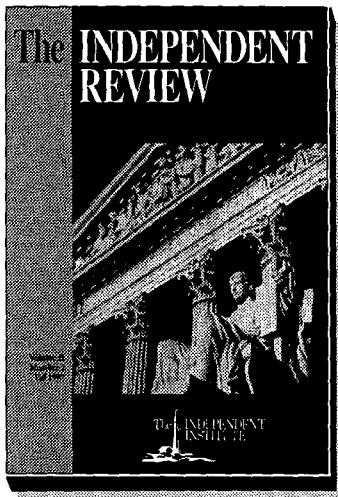

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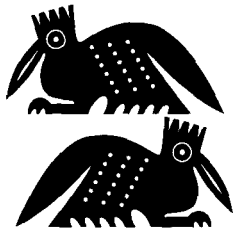

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